

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: CIVIL PART  
ATLANTIC COUNTY  
DOCKET NO.: ATL-L-2648-15  
A.D. # \_\_\_\_\_

IN RE: JOHNSON AND JOHNSON) TRANSCRIPT  
TALCUM-BASED POWDER) OF  
PRODUCTS LITIGATION) HEARING  
)

Place: Atlantic County Civil Crt.  
1201 Bacharach Blvd.  
Atlantic City, NJ 08401

Date: March 25, 2024  
**AFTERNOON SESSION**

BEFORE:

HONORABLE JOHN C. PORTO, J.S.C. AND  
RUKHSANAH L. SINGH, U.S.M.J.

TRANSCRIPT ORDERED BY:

JEFFREY M. POLLOCK, ESQ.,  
(Fox Rothschild)

APPEARANCES:

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MICHAEL SABO, ESQ.  
(Fox Rothschild)  
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I N D E X

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
<u>WITNESSES FOR</u> <u>JOHNSON &amp; JOHNSON:</u>				
Erik Haas		3	25	
James Murdica	44	78	111	115

1 (Hearing continued at 1:50 p.m.)

2 THE COURT: Thank you, please be seated. We  
3 will continue all counsel is present. Mr. Haas, you're  
4 still under oath. Mr. Pollock.

5 CROSS EXAMINATION CONTINUES BY MR. POLLOCK:

6 Q Mr. Haas, if you could go to the binder to  
7 exhibit two, that would be wonderful. Let me know when  
8 you're there.

9 A I am there.

10 Q Yes, sir. So, in exhibit two, it's an email  
11 from Jim Conlan to you. Correct?

12 A That is correct.

13 Q And he -- that document is dated August 23,  
14 2022. Correct?

15 A That is correct.

16 Q And it says in the second paragraph, I am  
17 among those who think the likelihood of a planned  
18 confirmation injunction, skipping the part in the Texas  
19 Step Case has gone from low to essentially nonexistent.  
20 Do you see that portion?

21 A Yes, I see that.

22 Q And there's nothing in there that reflects  
23 that that communication originated from or was shared  
24 from Mr. Birchfield (phonetic). Correct?

25 A No, that's exactly what I testified on direct that

1 Mr. Conlan concealed from and did not disclose to us  
2 that he had been having conversation with Beasley Allen  
3 as early as April 2023 regarding alternatives to  
4 resolve the Talc litigation and was engaged in  
5 discussions on proposals to submit to the media news.

6 Q Fair enough. But there's nothing in this  
7 document that demonstrates in any way that Mr. Conlan  
8 and Mr. Birchfield were discussing whether the LTL  
9 Texas Two Step was a good idea?

10 A That's again, that's exactly what I testified on  
11 direct that we had no disclosure whatsoever from Mr.  
12 Conlan or Mr. Birchfield regarding their alliance and  
13 the fact that they were working together without our  
14 knowledge, consent, or waiver.

15 Q So, if Mr. Conlan has switched tasks, he went  
16 to Legacy after he left Faegre. Correct?

17 A He did go to Legacy after he left Faegre Drinker.  
18 When you say he switched tasks, he's now in a different  
19 role. He opened up a business where he's purporting to  
20 go out and pitch the Legacy structured optimization  
21 model as I understand it.

22 Q I couldn't say it better myself. So, he goes  
23 from being a lawyer at Faegre to being a businessman at  
24 a company that he formed called Legacy. Right?

25 A Right. And when --

1 Q Excellent. So, when he's at -- and in that  
2 role he's not serving as legal counsel for any of  
3 Beasley Allen's clients. Is he?

4 A I cannot opine on that one way or the other.

5 Q Let me try it this way. You have not facts,  
6 whatsoever, to support that he was representing Beasley  
7 Allen's clients. Right?

8 A In a legal capacity, again, I can't opine on that  
9 one way or the other. I can opine that he is -- or I  
10 can state factually that he is addressing the same  
11 matters and the same issues that he addressed when he  
12 was our counsel.

13 Q But, I'm asking not about what -- your  
14 opinion is it's the same subject matter. I disagree,  
15 because neither one of us have facts in front of us  
16 that they are the same subject matter. But I am going  
17 to put that aside. I would ask you to do the same.

18 A I disagree with that --

19 Q I'm asking simply about --

20 A -- position, so I am not going to put that aside.

21 Q Mr. Haas, I'm asking about the role that he  
22 played once he went to Legacy, was he representing a  
23 client?

24 A Again --

25 MR. BRODY: I object. That's been asked and

1 answered, I think on two previous times now.

2 THE COURT: Mr. Pollock, are you suggesting  
3 re-asking the question that you did not get a  
4 satisfactory answer to your question?

5 MR. POLLOCK: Well the only reason is I'm  
6 asking a pretty basic question, and I'm getting a lot  
7 of, it must be, or it could be, or therefore. If you  
8 think the answer is already in the record, Your Honor,  
9 I do not want to waste your time.

10 THE COURT: I think I cutoff Mr. Haas, so  
11 want do you pose that question again and we'll hear Mr.  
12 Haas's testimony.

13 BY MR. POLLOCK:

14 Q When Mr. Conlan switched from being at Faegre  
15 to Legacy Solution, isn't it true he did not have a  
16 client in the LTL litigation?

17 A If I'm understanding your question, Mr. Conlan  
18 stopped representing LTL as a current representation in  
19 March 2022, that didn't put an end to his ethical  
20 obligations to LTL or J&J which are continuing. So, in  
21 that respect he did have a client.

22 Q Let me try it this way. A lawyer who  
23 represents a client in New Jersey has to have an IOLTA  
24 account. They have to have an account that is required  
25 by the Rules of Professional Conduct. When Mr. Conlan

1 switches from being a Faegre lawyer to being a business  
2 guy at Legacy, isn't it true as a Legacy guy, no longer  
3 a Faegre guy, he no longer has to have an IOLTA account  
4 because he does not have a client in New Jersey?

5 A Again, I wouldn't have the foundation to say what  
6 account he has. I can -- the question again is whether  
7 or not he has ongoing obligations to LTL and J&J as his  
8 client, the answer is yes.

9 I can't -- sir, I can't sit here and tell you  
10 whether Mr. Conlan kept his account up to date.

11 MR. POLLOCK: Your Honor, I'm not asking  
12 whether he had an ongoing duty of confidentiality,  
13 which is what Judge Singh asked me about before. I've  
14 conceded that he does. I am asking whether he has a  
15 client, because that is -- you have accused my client  
16 of violating RPCs. And the RPCs require that Mr.  
17 Conlan have a client at the time he's at Legacy.

18 So, I'm asking the simple question, do you  
19 have any evidence --

20 THE WITNESS: I gave you that simple answer  
21 to that very question, because you're asking my view on  
22 whether he has a client. And my answer is yes he does,  
23 because he has an ongoing obligation to LTL and J&J.  
24 I've answered that three times, sir.

25 Q Excellent. So it's your view?

1

2 A You asked me for my view and I gave you the view  
3 three times.

4 Q Fair enough. That's your view. Correct? If  
5 you go to exhibit four, please. Let me know when  
6 you're ready.

7 A I'm at exhibit four, sir.

8 Q Excellent. Exhibit four, October 18th, this  
9 is an email from James Conlan to Dwayne VanArsdale,  
10 Doug Dachille, and to you and to Andrew White.  
11 Correct?

12 A Yes.

13 Q That document says, Legacy has the support of  
14 lead counsel for the OC claimants, including Andy  
15 Birchfield. Do you see that?

16 A I do, sir.

17 Q And it goes on and says, Andy Birchfield,  
18 Doug Dachille and I are prepared to meet with you.  
19 Correct?

20 A That is correct.

21 Q But it doesn't say what the Legacy proposal  
22 is, or what's being suggested to J&J. Does it?

23 A I disagree. He starts the paragraph by saying,  
24 thank you for our efforts to evaluate our proposal, to  
25 further enhance our solution. So this email is written

1 in terms of an enhancement of the proposal that he has  
2 provided and it's conveying that purportedly for the  
3 first time he's now going out and obtained the support  
4 of Andy Birchfield, when in fact what was undisclosed  
5 and concealed was that he had been working with Mr.  
6 Birchfield since April of 2023. So I disagree with  
7 you.

8 Q So, there is a proposal attached to this? I  
9 asked you whether there was a proposal here.

10 A You said there was no proposal. You didn't ask me  
11 whether there was a proposal attached.

12 Q Fine. Is there a proposal attached to this  
13 document?

14 A That's a different question. There is not a  
15 proposal attached to this email.

16 Q Excellent. But there is on November 7th of  
17 -- exhibit seven, I apologize, November 9, 2023,  
18 Plenary Hearing 62. Let me know when you're there.

19 A I'm at exhibit seven.

20 Q Correct. So, that has a proposal from  
21 Legacy. Right?

22 A No. It has a settlement matrix.

23 Q Okay. It has a settlement matrix. There's  
24 also a lot of discussion about how Legacy would purport  
25 to transfer the liabilities from J&J to Legacy. Right?

1 A And there was this -- and if you're talking in  
2 terms of proposal, there likewise was in connection  
3 with the first meeting a deck that was provided.

4 Q Okay.

5 A So, if there's a distinction that you're trying to  
6 draw between a proposal, sir, I'm just not  
7 understanding that distinction if you're trying to make  
8 one.

9 Q I'm not that smart. All I'm asking is on  
10 exhibit four, we've agreed there's no proposal  
11 attached. On exhibit seven, this document has a matrix  
12 and it has a series of colloquy, right, a discussion  
13 regarding what Legacy would propose to do. Can we  
14 agree on that?

15 A Yes, we can agree on that.

16 Q Excellent. And that Mr. Birchfield is not  
17 part of -- he's not referred to as the CEC, it's not  
18 his proposal. There's nothing there that he proposes.  
19 Right?

20 A If your position is that when they're referring to  
21 the leadership counsel on the -- both the federal MDL  
22 and state court cases, if your suggestion is that  
23 doesn't refer to Mr. Birchfield, I would disagree  
24 because that's the same language that was utilized in  
25 the previous example, exhibit that we just looked at

1       that referred to Mr. Birchfield as that person.

2               Q     Okay.

3       A     So, I disagree with that proposal -- with that  
4       position.

5               Q     So, let me clean this up. Exhibit four,  
6       there's no proposal attached. We've agreed on that.  
7       So we can agree that Mr. Birchfield did not make a  
8       proposal on exhibit four. Right?

9       A     I disagree, sir. I disagree with that for the  
10      reason previously stated, which was there was a  
11      proposal in the email, the previous one references a  
12      proposal. So, I disagree with your proposition there.

13              Q     Great. Where in exhibit four does it say  
14      proposal? Show it to me please?

15      A     The very first sentence, I just read it.

16              Q     Thank for your efforts to evaluate our  
17      proposal. Who is our --

18      A     Right.

19              Q     But is there a proposal attached?

20      A     He's referring back to the previously made  
21      proposal, which is -- was provided in a PowerPoint  
22      format. So, I disagree sir.

23              Q     Okay. But you don't have the proposal here  
24      today. You've not produced it in this record. Right?

25      A     Are you saying what -- are you saying it's in the

1 binder here today?

2 Q You -- there is no -- I thought we had  
3 agreed, apparently not, that in exhibit four there is  
4 no proposal attached?

5 A Now, you're asking me a different question, sir.  
6 I'm not trying to be difficult. You're saying whether  
7 -- you first asked me whether it references a proposal.  
8 It does. It says effort our proposal. Then you  
9 acknowledge that's in the first sentence. Now, you're  
10 asking whether it was attached. We previously agreed,  
11 I did not dispute that there was not a proposal.

12 Q Excellent. What is the proposal? What is  
13 the proposal, on exhibit four what was that proposal?

14 A It was the proposal that Mr. Conlan presented on  
15 September 11th.

16 Q Excellent. And Mr. Conlan prepared the  
17 exhibit seven, November 9 proposal. Right?

18 A Again, I disagree with your proposition because  
19 in-between the 11th of September and November 9th, Mr.  
20 Conlan disclosed for the first time that Mr. Birchfield  
21 is working with him, and he purports in exhibit four to  
22 say, oh I'm going to address the issue you asked in the  
23 September 11th meeting which is what was the dollar  
24 amount that you're purporting to say would be  
25 sufficient for a divisional merger to be effective. He

1 says, now I've got that because I've got Andy  
2 Birchfield. So, he's saying he went out and  
3 supplemented it, or in his words to further enhanced  
4 it, but what he actually did is to be working on that  
5 same thing without telling us since April. Then you go  
6 to the 7th, and he uses the same language to refer to  
7 Legacy's principle -- the support he would have from  
8 the leadership counsel on both the federal MDL and  
9 state court cases.

10 So, I disagree with your proposition that Mr.  
11 Birchfield is not referenced in there. That's the  
12 continuity. It was the September 11th presentation to  
13 the April 18th supplement and disclosure for the first  
14 time of Mr. Birchfield's role to the November 9th  
15 presentation where he circumvented me, so that he could  
16 go directly to the board of directors with a  
17 proposition that now includes the proposal that Mr.  
18 Birchfield had and that he also had represented at the  
19 Mass Tort's Made Perfect on I believe it was October  
20 12th.

21 Q On September -- exhibit six, November 5, can  
22 you show me where in this document it says this is a  
23 proposal or anything that was recommended by Andy  
24 Birchfield or Beasley Allen?

25 A Exhibit six?

1 Q Exhibit six.

2 MR. SABO: I don't think you mean exhibit  
3 six.

4 Q I'm sorry, I apologize. Exhibit seven.

5 A Sir, I've said this repeatedly, so I will repeat  
6 it one more time.

7 Q Go ahead.

8 A It's the -- where the document makes reference to  
9 Legacy's proposal has been reviewed and supported by  
10 leadership counsel at both the federal MDL and state --

11 Q Where are you looking at exhibit seven, I'm  
12 sorry? Where are you on exhibit seven?

13 A Sir, let me direct you to the second paragraph  
14 last sentence.

15 Q Okay.

16 A Legacy's proposal has been reviewed and supported  
17 by leadership counsel on both the federal and --

18 Q Got it.

19 A -- MDL and in state court cases across the  
20 country. And as I indicated that's the same language  
21 that was utilized in exhibit four to reference Mr.  
22 Birchfield. There's no evidence or dispute in the  
23 record that he's not referring to Mr. Birchfield. So  
24 when you're asking is it my position, this is referring  
25 to Mr. Birchfield, yes, it is. Because not only is the

1 language the same, not only does it follow on the heels  
2 of the October 18th correspondence, first time  
3 introducing Mr. Birchfield as further enhancing the  
4 proposal with an amount, but it's also consistent with  
5 the amounts that Mr. Birchfield was saying at the  
6 October 17th Mass Tort's Made Perfect Seminar.

7 Q Move on briefly to Exhibit three, please.  
8 Tell me when you're ready.

9 A I'm on exhibit three, sir. Thank you.

10 Q So, this is a J&J earnings call for the  
11 quarter three 2023. When these calls take place, do  
12 you participate in the entire call?

13 A There is no set position for these calls for a  
14 litigation update. So, depending upon the  
15 circumstances and depending upon the questions,  
16 perhaps, that we get in advance of an earnings call, I  
17 may or may not participate. I believe because of the  
18 July 28th, 2023 dismissal we had received some  
19 inquiries, and so for that reason we scheduled the time  
20 for me to give, I think, a pre-statement and then an  
21 oral statement.

22 Q Do you make every effort at J&J to be  
23 accurate in your quarterly calls?

24 A I do, sir, thank you.

25 Q Excellent. If you can go to Plenary Hearing

1       10. This is a statement from Joseph Wolk, W-O-L-K,  
2       bottom of the page. Let me know when you're ready.

3               He says last sentence, "Due to higher  
4       interest rates earned our earnings are now expected  
5       interest income in the range of \$300 million to \$400  
6       million." Do you see that?

7       A     Sir, no I don't see it.

8               Q     The bottom of the page looking across the  
9       P&L, adjusted pre-tax operating margin is still  
10      expected to improve by approximately 50 basis points  
11      versus prior year, driven by stronger margin profile  
12      and business mix. Net other income is also being  
13      maintained ranging from \$1.7 billion to \$1.9 billion.  
14      Due to higher interest rates earned on cash, now it's  
15      expected an interest income in the range of \$300  
16      million to \$400 million.

17              Do you see that?

18      A     I see the text that you're referring to.

19              Q     You see it?

20      A     I see it.

21              Q     Do you believe it's accurate?

22      A     (no response).

23              Q     Do you believe it's accurate?

24      A     I believe that Mr. Wolk is making an accurate  
25      statement. I don't know what context you're trying to

1 put it in, because it is not in anyway related to or  
2 inconsistent with my prior testimony.

3 Q Fair enough. If you go to page Plenary  
4 Hearing 14, this is Erik Haas, Worldwide Vice President  
5 of Litigation at J&J, which is you, I assume. If we  
6 can go to the top right-hand side there on page 14.  
7 You talk about a four-prong strategy, I believe it is.

8 A Yes.

9 Q And the second prong is consensual  
10 resolution. Consensual resolution, you mentioned again  
11 in the second full paragraph in terms of timing on the  
12 second prong, the consensual resolution. And then you  
13 refer to it again in the next paragraph, it says third,  
14 while those negotiations are proceeding.

15 Do you see the section, the words I'm  
16 referring to, consensual resolution, consensual  
17 resolution and describing those as negotiations?

18 A Yes.

19 Q So, isn't it true that one of the things that  
20 you were attempting to do was to encourage the world to  
21 come and negotiate with J&J to try and resolve the  
22 claims against it for the talc?

23 A I don't think I would put it that way. I think  
24 what I was doing was as consistent with what was  
25 disclosed and is in the record in the bankruptcy court,

1 we were working on a resolution plan that had the  
2 support of the counsel representing the vast majority  
3 of the claimants and we were further refining that plan  
4 consistent with Judge Kaplan's recommendation in his  
5 July 28th, 2023 Opinion, where he explicitly urged and  
6 recommended us to continue to do so, because we had  
7 made, in his words, remarkable success in proceeding to  
8 a consensual resolution and what we were endeavoring to  
9 do is to continue down that path through a proposed  
10 bankruptcy.

11 I can get into more detail if you would like, but  
12 what effectively the plan is involving is bringing more  
13 claimants and counsel for claimants voluntarily into  
14 the deal, and determining whether and to what extent we  
15 should let others passthrough that do not want to  
16 participate because in the end we want a consensual  
17 deal. We do not want to go back to a circumstance, we  
18 have a situation where we have a lot of objectors. We  
19 didn't think we were going to get them the last time  
20 because of the majority had voted in favor of it. But  
21 that is the goal. The goal is to obtain finality for  
22 both future and current claimants in a fair and  
23 equitable resolution. So, that's what I was referring  
24 to. It flows exactly from what was done in the  
25 bankruptcy, but Judge Kaplan recognized and the

1       laudable goals that we were seeking to achieve.

2               Q       So you were willing to negotiate within the  
3       bankruptcy context only. Is that right?

4       A       Sir, that is demonstratively false based upon the  
5       record in this case and the record in the bankruptcy  
6       case. There is evidence demonstrating that we were  
7       negotiating with Mr. Birchfield as early as Fall of  
8       2020, where he was seeking \$3.25 billion for an ovarian  
9       only deal. We negotiated in the Spring of 2021, again  
10      with Mr. Birchfield, the TCC in Imerys (phonetic), the  
11      FCR, we were told we had a deal done by the TCC in  
12      Imerys for \$4.2 billion, in the end they weren't able  
13      to deliver on that.

14              We negotiate in the bankruptcy case for the \$8.9  
15      billion resolutions. Again, we were told by the  
16      mediators in that deal that is now a matter of record  
17      that the TCC including Mr. Birchfield were in favor of  
18      that and at the last minute they backed out. So, that  
19      is demonstratively untrue. We have negotiated outside  
20      the bankruptcy. We have negotiated inside the  
21      bankruptcy. We've negotiated settlements where  
22      appropriate. We are endeavoring to do the best to get  
23      a comprehensive and final resolution that is in the  
24      best interest of all claimants so that we can put this  
25      matter behind us, so we can stop wasting money on

1 attorney's fees that can otherwise be spent to saving  
2 people's lives.

3 Q Excellent. With regard to the \$3.25 billion  
4 and the \$4.2 billion, I think those are the right  
5 numbers, is that right, 3.25 and 4.2 billion you  
6 mentioned?

7 A Yes, sir.

8 Q Excellent. Do you have a single email to  
9 confirm those?

10 A To confirm?

11 Q That either number was the number that Mr.  
12 Birchfield ever agreed to?

13 A Yes, they're in the record in the bankruptcy.

14 Q So, you have emails from Andy Birchfield  
15 saying that he agreed to accept \$3.25 or \$4.2 billion?

16 A I examined Mr. Birchfield with respect to those at  
17 his deposition. So, I --

18 MR. POLLOCK: Your Honor, I want an answer to  
19 my question. I'm tired of --

20 A I'm trying to --

21 MR. POLLOCK: I want an answer to my  
22 question.

23 MR. BRODY: Mr. Haas is trying to answer the  
24 question.

25 THE COURT: I'm going to let Mr. Haas answer

1 the question. And then Mr. Pollock, you tell me if  
2 that was responsive to your question.

3 MR. POLLOCK: I asked if there's an email.

4 A You're focusing on email, what I was trying to  
5 explain before you interrupted me, sir, is if you look  
6 at Mr. Birchfield's deposition, you will see the  
7 documentation that supports the very proposition that I  
8 stated. It's in the record. So you can look at it and  
9 you can decide whether or not it supports it or not.

10 But there's documents -- the very agreement itself  
11 has Mr. Birchfield all over it. It says Mr. Birchfield  
12 and Beasley Allen. It's all in that document. So,  
13 look at the exhibits. I refer you to the exhibits.  
14 Okay.

15 Q I did read the transcript and I've read the  
16 exhibits. If you believed that you had a deal, why  
17 didn't you move to enforce the next day?

18 A Which deal were you talking about?

19 Q If you really believed you had a deal for  
20 \$4.2 billion with Andy Birchfield, listen to my  
21 question please for once. If you believed you had a  
22 deal for \$4.2 billion and that was the deal, I got this  
23 done, why didn't you move to enforce immediately?

24 A Let me explain exactly what happens here. Let me  
25 explain. The TCC in --

1 MR. POLLOCK: Your Honor, this is exactly why  
2 I don't want a narrative answer. I want an answer to  
3 my question.

4 THE COURT: Mr. Haas, why would you not have  
5 gone and enforce the settlement?

6 THE WITNESS: Because he's misconstruing what  
7 I said. What I said is in the bankruptcy -- in respect  
8 to the \$4.2 billion settlement, the Tort Claimant's  
9 Committee Steve Barron and the other members of the TCC  
10 represented to us that the deal was done, which  
11 subsequently they came back and told, after they told  
12 us the deal was done, they said they couldn't deliver  
13 it because the FCR wasn't participating. So, that is  
14 why we never ended up getting a final signed document,  
15 which you need to enforce it. What we had was the  
16 representation that the deal was done.

17 The same thing with the \$8.9 billion, we had  
18 the representation that the deal was done on Sunday  
19 night, and then on a Thursday, we received the  
20 statement that it had been retracted. So, if I had an  
21 enforceable deal, yes sir, of course I would enforce  
22 it. If they had --

23 BY MR. POLLOCK:

24 Q But you didn't enforce it. Correct? You did  
25 not enforce it?

1 A Please don't interrupt me. If I had --

2 Q No, sir, to be honest with you, there's a  
3 process here. The process is not that you get -- this  
4 is not the Erik Haas show. You get to answer  
5 questions when I ask them. Your counsel can object.  
6 But the fact is this is not the time -- this is not the  
7 time for you, Erik Haas, to deliberate on the law. I'm  
8 frankly entitled to an answer.

9 MR. BRODY: Your Honor, if --

10 THE COURT: Mr. Haas did provide an answer to  
11 your question. So, your second question was with  
12 regard to, so you didn't proceed with a motion to  
13 enforce?

14 MR. POLLOCK: Correct.

15 MR. BRODY: And Your Honor, Mr. Haas was  
16 answering the question and I would ask that if Mr.  
17 Pollock has an objection he direct the objection to the  
18 Court so that the Court can rule on it and not tell Mr.  
19 Haas what he can or can't say. Mr. Haas is trying to  
20 answer his questions.

21 You know, I've let this line of questioning  
22 go but it seems we're --

23 THE COURT: I think everybody knows what the  
24 order is. We're getting some latitude here. I want to  
25 move things along. But Mr. Pollock, your question to

1 Mr. Haas is, so you didn't move to enforce the  
2 settlement?

3 MR. POLLOCK: Correct, that was all I asked.

4 THE COURT: And I think the answer was yes,  
5 he did not move to --

6 MR. POLLOCK: Excellent, I'm prepared to move  
7 on, Judge.

8 THE COURT: Mr. Haas, I'm not taking  
9 anybody's position or substituting myself. I'm just  
10 trying to move things along as to what the Court's  
11 hearing.

12 MR. POLLOCK: Understood and I appreciate  
13 Your Honor. Your Honor, I have no further questions at  
14 this time.

15 THE COURT: Thank you. Redirect?

16 MR. BRODY: Yes.

17 THE COURT: Oh wait. Judge Singh, do you  
18 have any questions for Mr. Haas? I don't have any  
19 questions.

20 MR. BRODY: I do have some redirect, Your  
21 Honor, and I'll try to be brief and I want to try to  
22 focus us back on the issues that we believe are  
23 important to the disqualification question before the  
24 Court.

25 REDIRECT EXAMINATION BY MR. BRODY:

1           Q     The first thing I want to ask you, Mr. Haas,  
2     your testimony about the kinds of issues and privilege  
3     and confidential communications that Mr. Conlan was  
4     privied to, exposed to, a part of while he was outside  
5     counsel for Johnson & Johnson is that based on your  
6     personal knowledge?

7     A     Yes, sir.

8           Q     And how did you acquire that personal  
9     knowledge?

10    A     Through group calls, through individual calls from  
11    Mr. Conlan, through individual emails with Mr. Conlan,  
12    going out to dinner, going out to lunch with Mr.  
13    Conlan. Group calls where we had deliberations among  
14    the entire outside counsel group.

15           So, it was one interaction after the other  
16    throughout for the entire time that he was retained by  
17    Johnson & Johnson. He was an integral part of our  
18    outside counsel group that worked with our internal  
19    counsel group to develop and implement the strategies  
20    for both the litigation, adjudication, and a resolution  
21    of the talc claims.

22           Q     And you've talked about the outside counsel  
23    team. But did you have one-on-one direct  
24    communications with Mr. Conlan about privileged and  
25    confidential strategic considerations related to the

1 litigation pending her and in the MDL?

2 A I had many one-on-one conversations with him and  
3 in addition he prepared memorandum that he directed  
4 solely to me to provide his commentary on other  
5 counsel's positions, not just with respect to  
6 structural optimization but with all aspects of the  
7 litigation to express his particular views and take  
8 some of those issues.

9 MR. POLLOCK: Your Honor, motion to strike  
10 under the best evidence rule again. I mean, I've asked  
11 for any of those documents. There's not here. He's  
12 testifying now directly about memorandum, the first  
13 time I've heard about it, even though I've asked on  
14 direct and on cross -- direct and cross, this is the  
15 first time I'm hearing this memorandum. I move to  
16 strike under the best evidence rule. It's not here.

17 THE COURT: Well with regard to the  
18 testimony, I think under our scenario here, I can have  
19 that considered as part of the weight of the evidence,  
20 if there's no evidence with regard to the testimony,  
21 so.

22 MR. POLLOCK: Agreed.

23 BY MR. BRODY:

24 Q Mr. Haas, let me just ask you, so these --  
25 you know, memos that were prepared by Mr. Conlan for

1       you, and for you and the in-house J&J team alone, did  
2       you then have discussions with Mr. Conlan, and again,  
3       because the privilege concerns, without getting into  
4       the substance, did you have discussions with Mr. Conlan  
5       about the strategies that were discussed in those  
6       memorandum?

7       A     I did. I had many discussions with him about  
8       them. I, at the time, played great heed to his views.  
9       They influenced our strategic thinking vis-a-vis the  
10      other counsel, vis-a-vis our -- the amounts, the  
11      timing, how we would go about approaching our counter-  
12      parties, in which forum, in which structure. So, yes  
13      they did.

14      Q     Did you also have one-on-one discussions with  
15      Mr. Conlan about resolutions that the company was  
16      seeking to negotiate through the Imerys bankruptcy?

17      A     Yes.

18      Q     Why were you having those one-on-one  
19      conversations with Mr. Conlan?

20      A     Because as I indicated on my direct, consistent  
21      with what is in the record about his own view of his  
22      expertise, Mr. Conlan held himself out as a preeminent  
23      expert in bankruptcy law and the resolution in Mass  
24      Tort's Liability.

25      Q     During the Imerys bankruptcy was Mr. Conlan

1 negotiating on J&J's behalf directly with counsel for  
2 the TCC?

3 A Yes, he was.

4 Q Was he directing -- was he negotiating,  
5 excuse me, on J&J's behalf directly with the future  
6 claimants' representative?

7 A Yes, future claimants' representative counsel,  
8 yes.

9 MR. POLLOCK: Can we just get clarification  
10 is that Imerys or LTL?

11 MR. BRODY: The question was about the  
12 Imerys bankruptcy.

13 MR. POLLOCK: Imerys, okay, thank you.

14 Q And did you have discussions with him during  
15 that time period about J&J's negotiating strategy?

16 A Yes, I did. By the way, to the question, he also  
17 had the same discussions and conveyed the same issues  
18 with the respect to the LTL FCR.

19 Q Okay. That's the FCR and the LTL bankruptcy?

20 A Yes, future claims representative.

21 Q Okay. Were those discussions, again without  
22 revealing any of the substance of J&J's negotiating  
23 strategy, but were those discussions about Johnson &  
24 Johnson's negotiating strategy, in your view, germane  
25 to the issues that Johnson & Johnson was attempting to

1 negotiate in the LTL bankruptcy in the summer of 2023?

2 A Yes. Just again, those issues were germane to the  
3 entire time frame from 2020 when I started to today.

4 Again, when we were in bankruptcy because of the  
5 automatic stay, everything else was frozen and much of  
6 the time in the automatic -- and we were in bankruptcy  
7 we were fighting the motion to dismiss twice. The  
8 first time we prevailed the second time it was  
9 dismissed.

10 And as a consequence there has been little  
11 progression forward with respect to those issues. So,  
12 we're effectively still struggling and dealing with how  
13 to come up with a comprehensive and final resolution  
14 for the talc claims. So, the same issues were  
15 applicable then as now, and the conversations we had  
16 shed light on our thinking with respect to  
17 strategically what, when, why, how we would engage in  
18 that process.

19 Q I take it those are not the kinds of  
20 strategic discussions and considerations you would ever  
21 share with your opposing counsel?

22 A Absolutely not, for the reasons I've stated  
23 previously, fundamentally undermines the adversarial  
24 process.

25 Q If you can turn to exhibit four in the

1 binder, Mr. Haas.

2 A Yes, I'm there.

3 Q There was a suggestion that somehow there's  
4 not a proposal associated with this email of October  
5 18th. If you can turn to the second page of that  
6 document. Do you see there's a -- the October 18th  
7 email is replying to an email of September 28th from  
8 Douglas Dachille. Do you see that?

9 A I do.

10 Q And does the September 28th email from  
11 Douglas Dachille set out the proposal?

12 A Yes, it summarizes the proposal that in fact was  
13 discussed as I testified in the September 11th meeting.  
14 So, we had the September 11th meeting. You can look  
15 down this series of email change to bring it back to  
16 August 21st when it was first solicited.

17 So, Douglas Dachille reached out to a contact,  
18 through our treasurer. Our treasurer responded, copied  
19 us. We set up the September 11th meeting where the  
20 proposal was presented. Doug Dachille responds on  
21 September 28th with respect to that proposal. Then on  
22 the 18th Mr. Conlan purports to say that for the time  
23 he's enhancing that proposal with input from Mr.  
24 Birchfield, but it's the same proposal. That's why  
25 when I was responding to Mr. Pollock's questions I was

1 referring to the first sentence that said proposal.

2 It's all the same proposal.

3 Q But, as you've explained, I take it, the only  
4 thing that was new or the things that were new in the  
5 October 18th email were the mention of a settlement  
6 matrix, and the explanation that had already been  
7 shared with Mr. Birchfield and he supported it and Mr.  
8 Birchfield was ready to come in with Mr. Conlan to talk  
9 about the matrix?

10 A That's correct.

11 Q All right. You were asked some questions  
12 about whether Mr. Conlan is now a businessman and no  
13 longer a lawyer. You were also asked some questions  
14 about Rule 1.9 of the Rules of Professional Conduct.  
15 Rule 1.9(c) provides that a lawyer who has formerly  
16 represented a client in a matter shall not thereafter  
17 use information relating to the representation to the  
18 disadvantage of the former client, or reveal  
19 information relating to the representation.

20 Is -- since you were asked, in your view, has  
21 Mr. Conlan violated that?

22 A Yes, and I believe I did testify to that in  
23 response to Mr. Pollock's question, because as a lawyer  
24 your responsibilities do not end when that  
25 representation ends. You have a continuing ongoing

1 obligation. That is an explicit provision of the rule.

2 Q To put it differently, once you have  
3 represented a client in a matter, even if you leave the  
4 practice of law you can't switch sides. Right?

5 A In the way -- the vernacular that I used, once you  
6 have the client, you always have the client. Because  
7 that entity, in this case, Johnson & Johnson was and is  
8 Mr. Conlan's clients with respect to his duties and his  
9 ethical obligations.

10 Q You were also asked a number of questions  
11 about well, is this notebook or are these all the  
12 communications between Mr. Conlan and Mr. Birchfield.  
13 Do you recall those questions?

14 A Yes.

15 Q Did -- when was it that you first came to  
16 learn of the existence of extensive written  
17 communications directly between Mr. Conlan and Mr.  
18 Birchfield beginning in April of last year?

19 A As I testified, it was a couple of weeks ago when  
20 I first saw what Mr. Birchfield and the PSC had  
21 submitted into the federal court in the MDL with the  
22 privilege log where they disclosed myriad communication  
23 after communication by, between, and with Mr. Conlan,  
24 Beasley Allen and specifically with Mr. Birchfield,  
25 prior to ever asking us for our consent, requesting a

1       waiver, or even disclosing the existence of those  
2       communications.

3           Q     To this day, have they asked you for a  
4       waiver?

5       A     Never.

6           Q     Did Mr. Birchfield ever reach out to you to  
7       say that he had been approached by Mr. Conlan?

8       A     Never.

9           Q     Anyone from Beasley Allen?

10      A     Never.

11      Q     Anyone from the PSC?

12      A     Never.

13      Q     In your position as the worldwide head of  
14       litigation for Johnson & Johnson, to your knowledge did  
15       they approach anyone on the in-house or the outside  
16       counsel team to disclose that before you got the email  
17       from Mr. Conlan on October 18th?

18      A     No, they didn't. There's only one person in  
19       Johnson & Johnson authorized to give the waivers,  
20       that's me.

21      Q     And more broadly, did they ever -- to your  
22       knowledge, as worldwide head of litigation, did anyone  
23       even disclose prior to that date that Mr. Conlan was  
24       working with Mr. Birchfield and other members of the  
25       Beasley Allen firm?

1 A No.

2 Q Have you, Mr. Haas, had an opportunity to  
3 review a decision issued by the Special Master Judge  
4 Schneider in the MDL --

5 A Yes.

6 Q -- last week?

7 A I have.

8 MR. POLLOCK: Objection, Your Honor, beyond  
9 the scope, outside the record. This is direct  
10 examination.

11 THE COURT: What's the -- I'm sustaining  
12 that. That is outside the record, outside cross  
13 examination.

14 MR. BRODY: Your Honor, it's going to go  
15 directly to -- well let me set it up.

16 THE COURT: What's the problem?

17 MR. BRODY: I will put it within the scope  
18 directly -

19 THE COURT: Okay.

20 MR. BRODY: -- with a couple of questions,  
21 Your Honor.

22 BY MR. BRODY:

23 Q Mr. Haas, do you recall being asked questions  
24 about whether you had any evidence that Mr. Birchfield  
25 and Mr. Conlan had formed an alliance?

1 A Yes.

2 Q All right.

3 MR. BRODY: If I may approach, Your Honor?

4 THE COURT: With what?

5 MR. BRODY: With a copy of the order.

6 THE COURT: Would you share it with Mr.

7 Pollock?

8 MR. POLLOCK: I object to this entire thing.

9 If you look at exhibit 16, which is Andy's  
10 certification of January 29, paragraph 23, he addresses  
11 directly that he had communications with Mr. Conlan.  
12 He isn't hiding it. And Mr. Haas is saying oh, I just  
13 learned about it two weeks ago. That's not true. The  
14 fact is they knew about this as of January 29. Now  
15 suddenly we're going to try to expand the record. I  
16 have no opportunity, unless I'm going to start cross  
17 examining the special master who is here in the room,  
18 I'm going to start questioning everybody on the  
19 documents. I have no clue where this came from, what  
20 the validity of it is, or why it's relevant here today.

21 Mr. Brody gave his word to Judge Singh and to  
22 you, the record is closed, we're done. So, I  
23 vehemently object to suddenly now opening the record  
24 up, because what's going to be the end point.

25 THE COURT: Well I did sustain your

1 objection, Mr. Pollock. But I did offer Mr. Brody an  
2 opportunity to proffer what's that for.

3 MR. POLLOCK: Understood, Your Honor.

4 THE COURT: That's the Special Master's  
5 decision.

6 MR. POLLOCK: Judge, this is your courtroom,  
7 or Your Honor's courtroom, I'm trying to figure out how  
8 the linguistics of that work. Whatever you decide is  
9 fine with me, but I had to state the objection.

10 THE COURT: Certainly.

11 MR. BRODY: So, since it was (indiscernible)  
12 Mr. Haas, if you would --

13 THE COURT: What's the proffer, Mr. Brody  
14 with respect to the Special Master's --

15 MR. BRODY: Well, if I may approach, first so  
16 that he has a copy.

17 THE COURT: Well I want to hear what your  
18 proffer is first.

19 MR. BRODY: Sure, that the -- that the  
20 special master's decision describing the substance of  
21 those documents after his in-camera review supports the  
22 existence of an alliance between the two. And it goes  
23 directly to the point that Mr. Pollock was trying to  
24 make on cross examination that there is no evidence  
25 that Mr. Haas has seen of an alliance between the two.

1 It goes directly to that.

2 THE COURT: How does that then differ from  
3 what Mr. Birchfield was saying, I had communications  
4 with Mr. Conlan?

5 MR. BRODY: Because the only thing that Mr.  
6 Birchfield said in his declaration was to the best of  
7 my knowledge, I met Mr. Conlan for the first time on  
8 May 2nd, 2023. There is no additional information, no  
9 disclosure as to the extent of the conversations, the  
10 fact that there are emails going back and forth a  
11 period of months, that according to the privilege log  
12 they are exchanging claim matrices, estimates of  
13 ovarian cancer case values and claiming that those  
14 communications between Mr. Birchfield, Ms. Odell, and  
15 Mr. Conlan, are privileged, so that J&J can't see them.

16 So an --

17 MR. POLLOCK: Your Honor, these are -- I  
18 apologize.

19 MR. BRODY: -- extraneous statement in a  
20 declaration that says I met Mr. Conlan for the first  
21 time on May 2nd, 2023 doesn't tell us anything about  
22 what was going on. And to the extent we know or have  
23 an inkling of what was going on and what's in the  
24 documents that they have said are privileged, they're  
25 privileged communications with Johnson & Johnson's

1 former opposing counsel. We do have a very good idea.

2 THE COURT: Well we did find that that's part  
3 of the record. That's part of the federal record.  
4 That's part here. I can take judicial notice of that,  
5 of the existence.

6 MR. BRODY: And Your Honor, you can also take  
7 judicial notice of the special master, order number 21  
8 in the MDL.

9 THE COURT: My concern is I'm not going any  
10 further to say why wasn't that brought out in direct?  
11 Why wasn't it addressed earlier? Because we are  
12 getting somewhat out of the scope of where we were  
13 today, where I anticipated being today.

14 MR. BRODY: Well I think it's directly within  
15 the scope of the questions about you know, what --

16 THE COURT: What exactly does Mr. Haas have?

17 MR. BRODY: What do you have? Look at the  
18 notebook.

19 THE COURT: That's not lost on us.

20 MR. POLLOCK: Your Honor, this is all  
21 privileged mediation protected communications. So, if  
22 we're going to throw aside the mediation privilege,  
23 which I thought was pretty stark in New Jersey, we are  
24 cutting new ground. And to me, with all due respect to  
25 Judge Schneider who is sitting behind me, he has his

1 own opinions. He's entitled to his own views. But  
2 frankly, unless he made an express finding that Andy,  
3 Andy Birchfield conspired, which I don't think he did,  
4 with Mr. Conlan, I don't -- these are all protected  
5 communications. Now we're going to crack open the  
6 privilege. They have asserted the privilege multiple  
7 times.

8 THE COURT: We are not cracking open  
9 anything, other than we have the privilege log and we  
10 have a document -- a decision by the Special Master.

11 MR. POLLOCK: So, but where does this go?  
12 Once we take this first step --

13 THE COURT: Well I am going to permit the  
14 question and I'm going to permit you to reopen some  
15 aspect of your direct with regard to this decision.  
16 But we're not breaching, addressing, conflicting or  
17 doing anything with regard to the mediation privilege.

18 MR. BRODY: Absolutely, Your Honor. And I am  
19 not suggesting that we --

20 THE COURT: That (indiscernible) here that  
21 there's a myriad of reasons why that exists.

22 MR. BRODY: And I am not suggesting that we  
23 should do that. And I'm not going that direction.

24 BY MR. BRODY:

25 Q Mr. Haas, I'll just -- I'll just ask you,

1       you've read the Special Master's decision. Right?

2       A     Yes, I have.

3           Q     And you've read his conclusions based on his  
4       in-camera review of the documents. Correct?

5       A     Yes.

6           Q     And so, you understand that he indicated that  
7       subjects covered in the privileged documents include  
8       close collaboration and strategy communications  
9       regarding how to consider, conduct, participate in,  
10      initiate, and/or continue to mediate with J&J regarding  
11      plaintiff's proposal. Right?

12      A     Yes.

13          Q     Referring to close collaboration and strategy  
14      communications between Conlan and Legacy on the one  
15      hand and Beasley Allen on the other. Right?

16      A     That's correct.

17          Q     He indicated that subjects covered in the  
18      documents include regular communications with  
19      Birchfield and other counsel for plaintiffs regarding  
20      the foregoing matters including when and how to present  
21      the settlement proposal to J&J in the context of  
22      mediation. Are you familiar with that finding?

23      A     Yes, I am familiar with the finding.

24          Q     My question to you in response to the  
25      questions you've got on cross examination is does that

1 suggest to you that they had formed an alliance, or to  
2 use the words from the order were collaborating?

3 MR. POLLOCK: Your Honor, I object to whether  
4 --

5 A The way --

6 MR. POLLOCK: Let me object, please. I  
7 object because when it says the question, does it  
8 suggest to you, with due respect to the Court, I don't  
9 care what it suggests to Mr. Haas. What I care about  
10 are the facts. Is there a fact that there was a  
11 confidential disclosure in this case. And to me, he's  
12 allowed his own opinions, I've got my opinions. I  
13 don't think the court should really care of either one.  
14 I want to know what the facts are. I do think we  
15 should be limited to what the facts are, because that's  
16 what Trupo says, what are the facts?

17 THE COURT: Well ultimately, that question is  
18 to be resolved by the Court.

19 MR. POLLOCK: Correct.

20 MR. BRODY: So let me -- actually, Your  
21 Honor, I can rephrase the question -

22 THE COURT: Sure. I sustain the objection.

23 MR. BRODY: -- directly in the context of  
24 what Mr. Haas was asked by Mr. Pollock.

25 BY MR. BRODY:

1 Q Do you consider this to be --

2 THE COURT: Mr. Haas.

3 Q Mr. Haas.

4 THE COURT: By Mr. Pollock, yeah.

5 MR. BRODY: My point was I'm going to  
6 rephrase the question within the context of what Mr.  
7 Pollock asked of Mr. Haas.

8 THE COURT: Sure, okay.

9 MR. BRODY: Apologies if I'm mixing names up.

10 THE COURT: That's okay. I just wanted to  
11 make sure of who you were speaking of.

12 MR. BRODY: Yeah, no I'm going to put the  
13 questions in the context of the questions that Mr.  
14 Pollock asked Mr. Haas.

15 BY MR. BRODY:

16 Q Mr. Haas, is this close collaboration and  
17 these communications weren't disclosed to you at the  
18 time they were being made between your former counsel  
19 and Mr. Birchfield's firm to put it in the context of  
20 the words used by Mr. Pollock, evidence of an alliance  
21 between your former counsel and the Beasley Allen firm?

22 A They are. And to put it in context of when the  
23 entire line of questioning was presented, they do show  
24 evidence of alliance. It was not disclosed. It was  
25 concealed. And it's the type of collaboration that

1 fundamentally undermines the adversarial process by  
2 communicating with Mr. Birchfield on and have that  
3 alliance, on the very issues that are at the heart of  
4 the matters that we were adjudicating and seeking to  
5 resolve; and the very issues that were being debated,  
6 critiqued, discussed by and between us and outside  
7 counsel that presents an unfair advantage to our  
8 adversaries, and thwarts our ability and is thwarting  
9 today our ability to get a final effective and  
10 equitable resolution of this case for all claimants as  
11 well as for J&J.

12 Q Thank you, Mr. Haas. Those are my redirect  
13 questions.

14 THE COURT: Okay. Any questions, Judge  
15 Singh? I don't have any questions. Mr. Pollock.

16 MR. POLLOCK: No, Your Honor. Thank you very  
17 much and I appreciate your patience, Mr. Haas.

18 THE COURT: Okay. Thank you. You may step  
19 down. Mr. Brody, your next witness.

20 MR. BRODY: We call James Murdica, Your  
21 Honor.

22 THE COURT: Okay. Mr. Murdica, before you  
23 have a seat, please raise your right hand, tell me your  
24 name, spell your last name.

25 MR. MURDICA: James Murdica, M-U-R-D-I-C-A.

1 J A M E S M U R D I C A, DEFENDANT'S WITNESS, SWORN.

2 THE COURT: Thank you, have a seat.

3 DIRECT EXAMINATION BY MR. BRODY:

4 Q Mr. Murdica, Judge Porto, Judge Singh, I  
5 know we covered a lot of ground in Mr. Haas's  
6 examination and I'm going to try to avoid repeating  
7 anything that you've already heard.

8 Mr. Murdica, what's your current occupation?

9 A I'm an attorney.

10 Q And where do you work?

11 A I work at Barnes & Thornburg.

12 Q How long have you been there?

13 A I've been there seven years.

14 Q And in the time that you've been working at  
15 Barnes & Thornburg, have you represented Johnson &  
16 Johnson?

17 A The entire time.

18 Q As outside counsel?

19 A As outside counsel, correct.

20 Q Do you represent Johnson & Johnson in talc  
21 litigation?

22 A I do.

23 Q And does your representation of J&J include  
24 advising the company with respect to claims that are  
25 pending in this State Court MCL proceeding?

1 A It does. My role in talc is primarily as  
2 resolution counsel, advising on that. And during the  
3 pendency of the LTL bankruptcies I was the lead outside  
4 counsel responsible for the mediations.

5 Q Okay. And does your representation of J&J  
6 also just so the record is complete, include advising  
7 the company as to the cases that are pending the  
8 federal MDL?

9 A Very much so.

10 Q Who do you correspond with at Johnson &  
11 Johnson as part of your work on the talc litigation?

12 A I report to Andrew White and to Erik Haas.

13 Q All right. I'm going to be asking you some  
14 questions about the work that you have done on the talc  
15 litigation and the work that Mr. Conlan did as counsel  
16 for J&J on the talc litigation. I'm going to give you  
17 the same caution that I gave to Mr. Haas. I don't want  
18 you to go into the substance of any of the privileged  
19 and confidential communications that you have had with  
20 the company. So, I want to keep things on a high yes  
21 or no level when we are getting to substantive issues,  
22 because those conversations are privileged. Do you  
23 understand that?

24 A I understand.

25 Q All right. Through your representation of

1 Johnson & Johnson in the talc litigation, did you work  
2 with Mr. Conlan while he was representing the company?

3 A I did.

4 Q Did you work with him directly?

5 A I worked with him directly, yes.

6 Q Can you explain at a general level what  
7 issues you worked on with Mr. Conlan?

8 A Yes. Early in 2020, I --

9 MR. POLLOCK: Can I just get a clarification  
10 here, sir or Your Honor, whether we're talking Imerys  
11 or LTL, because we're apparently going to cover a long  
12 time period.

13 MR. BRODY: Your Honor, it was a general  
14 question as to what types of issues. We'll get into  
15 specifics but it was not limited to one thing or  
16 another.

17 THE COURT: It involved Imerys and LTL?

18 THE WITNESS: Ultimately, yes Your Honor. I  
19 was going to start with when I began in this role with  
20 talc in 2020.

21 THE COURT: As resolution counsel?

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: Okay. Mr. Brody?

24 Q You can proceed to answer the question.

25 A I was asked to take this role on by Johnson &

1 Johnson in early 2020 by Mr. Haas's predecessor Mr.  
2 Braunreuther (phonetic) who he testified about. From  
3 that time on, I was very involved daily in talc  
4 resolution, having conversations with various  
5 plaintiff's counsel.

6 Sometime in the summer of 2020 Mr. Conlan was  
7 hired by Braunreuther. Mr. Braunreuther asked me to  
8 work closely with Mr. Conlan on resolution. From that  
9 point on, Mr. Conlan and I worked very closely, to the  
10 point that we were speaking almost every day in the  
11 late summer and fall of 2020, email, phone calls,  
12 everything I did with respect to resolution, I either  
13 incorporated Mr. Conlan or ran by Mr. Conlan.

14 Q So you communicated by phone, I take it?

15 A Every day.

16 Q Over email?

17 A Yes.

18 Q In-person?

19 A When possible, yes. It was the end of COVID at  
20 that point in time.

21 Q And I think you indicated that you frequently  
22 would communicate daily with Mr. Conlan?

23 A That's correct.

24 Q Were you involved in communications involving  
25 Mr. Conlan and other members of the J&J team?

1       A       I was. As Mr. Haas described, we had weekly calls  
2       throughout the course of that year and throughout the  
3       time that Mr. Conlan became involved. And the weekly  
4       call would include the head of Weil, because they were  
5       handling the Imerys aspect, eventually somebody from  
6       Jones Day because they were handling the other  
7       bankruptcy aspect that became LTL, somebody from King  
8       and Spaulding, because they were national counsel for  
9       the Mesothelioma claims, somebody from Chicardi because  
10      they were national counsel for the ovarian claims,  
11      myself and Mr. Conlan. Internally at that point in  
12      time they would include Joe Braunreuther, the Deputy  
13      General Counsel of J&J, Don Kim, who had Mr. White's  
14      role at the time, and sometimes Mr. White, usually Mr.  
15      White.

16           Beyond that, that was just a standing weekly call.  
17      Mr. Conlan, myself, and Mr. Braunreuther, and usually  
18      Mr. Kim had regular separate calls to coordinate the  
19      high-level strategy on resolution, because Mr. Conlan  
20      and I were the ones that were in charge of the overall  
21      strategy and what we were doing really with resolution  
22      and trying to get a resolution, originally with Mr.  
23      Birchfield, outside of the Imerys bankruptcy and then  
24      utilizing the Imerys bankruptcy and so on.

25           Q       All right. Can you -- so you mentioned the

1 Imerys bankruptcy. With respect to your communications  
2 with Mr. Conlan, how was Mr. Conlan involved in the  
3 Imerys bankruptcy?

4 A So, like I said with regard to resolution, Mr.  
5 Conlan is a bankruptcy expert, but also a mass tort  
6 resolution expert. So, Mr. Conlan and I worked hand-  
7 in-hand throughout the time. He knew all of the  
8 bankruptcy, I didn't. He also had connections to the  
9 future claims representative and the future claims  
10 representative's counsel and I didn't. He knew all of  
11 the bankruptcy lawyers representing the debtor and the  
12 Tort Claimants Committee in Imerys, because he had  
13 worked with them for a long time. In fact, the  
14 debtor's counsel I believe was one of his mentees, I  
15 think he told me while he was at the Sidley firm.

16 Q All right. As part of his work, was Mr.  
17 Conlan involved in the legal teams' evaluation, the  
18 confidential and privileged evaluation of potential  
19 resolutions of J&J's talc litigation through the Imerys  
20 bankruptcy?

21 A He was, both through the Imerys bankruptcy and  
22 before that when we were negotiating with Mr.  
23 Birchfield for an initial resolution. Mr. Conlan -- I  
24 would forward Mr. Conlan or incorporate him in  
25 everything I was doing, so for example even before we

1 considered utilizing the Imerys bankruptcy he was  
2 seeing draft proposals with Mr. Birchfield and helping  
3 me with them, commenting on them, et cetera.

4 MR. POLLOCK: Your Honor, I'm going to raise  
5 the same objection that I raised with Mr. Haas  
6 regarding documents, communications, records, and  
7 things. You -- I understand that you understand my  
8 concern. I am not going to -- I don't want to  
9 interrupt the flow, but obviously you understand I have  
10 a continuing objection under the best evidence rule,  
11 under the fact that this is hearsay, it doesn't fall  
12 within 1006, it doesn't fall within 701. So, to me I  
13 object to it. But I don't want to keep interrupting.  
14 I don't want silence to acquiescence.

15 THE COURT: You have to make your record and  
16 my prior ruling with regard to documents in the  
17 documents continue.

18 MR. POLLOCK: Yes, sir. I'm going to sit  
19 down and shut up as long as I can, only because I don't  
20 want interrupt the flow, but please understand that I  
21 have an ongoing objection. Is that fair?

22 THE COURT: That's fair.

23 MR. POLLOCK: Thank you, sir.

24 THE COURT: You're welcome.

25 BY MR. BRODY:

1 Q Let me ask you this question, did -- was Mr.  
2 Conlan involved in evaluation of terms, resolution  
3 terms specifically proposed by Beasley Allen?

4 A He was.

5 Q What was Beasley Allen's role in the Imerys  
6 bankruptcy?

7 A Beasley Allen represented one of the claimants on  
8 the Tort Claimants Committee in the Imerys bankruptcy.

9 Q Okay. Were members of the Beasley Allen firm  
10 part of the TCC negotiating committee in the Imerys  
11 bankruptcy?

12 A They were. To my understanding, as was  
13 represented to me, the TCC in the Imerys appointed a  
14 negotiating committee and Lee Odell and Ted Meadows  
15 were two of the representatives on the negotiating  
16 committee that we worked with the most.

17 Q Was that at the time when Mr. Conlan was  
18 counsel for J&J?

19 A Yes, it was.

20 Q All right. Did you tell anyone at Beasley  
21 Allen during the Imerys bankruptcy that Mr. Conlan was  
22 working as counsel for J&J on the talc litigation?

23 A Yes, they knew that from me telling them but also  
24 from seeing Mr. Conlan on phone calls and Zooms and  
25 alike.

1 Q All right. Who did you tell that Mr. Conlan  
2 was working as counsel for J&J on the talc litigation?

3 A I certainly would've told Andy, and Lee and Ted  
4 would've at least seen him on the Zooms as we were  
5 negotiating a deal we almost -- you know we came very  
6 close on in February of 2021.

7 Q All right. When, to the best of your  
8 recollection did you first inform, you referred to  
9 Andy, I'm assuming you're referring to Mr. Birchfield.

10 A Yes, Mr. Birchfield.

11 Q When did you first tell Mr. Birchfield that  
12 Mr. Conlan was representing J&J at the top of the page?

13 A I don't remember exactly, but it would've been  
14 sometime in the fall of 2020.

15 Q Okay. He has submitted a certification in  
16 this case that says it was in 2020, is that consistent  
17 with your recollection?

18 A Yes.

19 Q All right. Were you negotiating with Mr.  
20 Birchfield, negotiating resolutions with Mr. Birchfield  
21 at that time?

22 A Yes, we started -- Mr. Birchfield and I started  
23 negotiating resolution, I believe in April 2020. And  
24 there were iterations from April 2020 right through  
25 2022/2023.

1 Q When you refer to iterations, you're talking  
2 to iterations of resolution proposals?

3 A Yes, there were several beginning in 2020.

4 Q And throughout the course of those various  
5 iterations, after Mr. Conlan came on board as a member  
6 of J&J's outside counsel team was he involved in  
7 internal privileged and confidential discussions of how  
8 the company would respond to and negotiate those  
9 different iterations?

10 A Yes, as I said before, Mr. Conlan and I were the  
11 main people running the strategy, evaluating the  
12 settlement options. And we were the only ones having  
13 the highest level conversations with the Deputy General  
14 Counsel.

15 Q And did that include, without revealing any  
16 of the substance the discussion of the specific terms  
17 that had been proposed by Beasley Allen?

18 A Absolutely.

19 Q And again, let me ask you this, did any of  
20 the proposals from Beasley Allen that you were  
21 discussing in that privileged and confidential context  
22 include things like settlement matrixes?

23 A They did.

24 Q And did you and Mr. Conlan engage in analysis  
25 of the values in those matrices, the structure of those

1 matrices, claims, procedures, things like that  
2 associated with them?

3 A We did, as did other parts of the team. We  
4 ultimately had questions for our experts on them, to  
5 get to weigh in on that. Yes, we did.

6 Q When you refer to experts, are you referring  
7 to consultants who were retained confidentially to  
8 provide confidential communications about things like  
9 claim values?

10 A That's correct.

11 Q About things like the potential number of  
12 future claimants.

13 A That's another thing that they were retained for,  
14 yes.

15 Q Okay. Did you in that period consider with  
16 Mr. Conlan proposals from Beasley Allen regarding the  
17 potential number and value of future claims?

18 A We did, yes.

19 Q And was Mr. Conlan privied to confidential  
20 work performed by J&J's litigation consultants related  
21 to that?

22 A He was. Mr. Conlan was my closest confidant on  
23 all of this from the first written Beasley Allen  
24 proposal, which he had and we discussed and went back  
25 and forth with Mr. Birchfield and his firm and that

1 process continued over months.

2 Q And through that process, did Mr. Conlan  
3 learn how J&J assessed the strengths and weaknesses of  
4 the Beasley Allen proposals?

5 A He did. He learned that. He learned the way J&J  
6 thinks about talc claims, how they value them. He  
7 learned perhaps more importantly the way I work,  
8 because I still am in charge of resolution for talc.  
9 We learned every strategy I had about who to go to, who  
10 not to go to, all the strategic options we should  
11 consider, everything I learned over my 15 years of  
12 being J&J's main outside resolution counsel. He was  
13 literally somebody that I talked every day about this.

14 Q I think you indicated that you regularly  
15 shared with him communications that you received from  
16 Beasley Allen?

17 A Yes, I forwarded them immediately.

18 Q Did you and Mr. Conlan discuss them?

19 A Yes.

20 Q Did you include in those discussions how to  
21 respond to them?

22 A Yes, many times I needed his advice because there  
23 were bankruptcy questions in addition to all of the  
24 settlement questions, as well. So, I couldn't do it  
25 without him.

1 Q Did you consider those communications and  
2 those discussions to be privileged and confidential?

3 A The most privileged and most important  
4 communications I ever had for J&J.

5 Q Would you ever share them with your opposing  
6 counsel?

7 A Never.

8 Q Why not?

9 A Because it would be so disadvantageous for  
10 somebody trying to deal with resolution to hand their  
11 play book over to the other side.

12 Q Did your strategy discussions with Mr. Conlan  
13 include things like how to participate in, how to  
14 initiate, how to continue negotiations with different  
15 parties on the other side of the litigation?

16 MR. POLLOCK: Objection, leading.

17 THE COURT: Sustained.

18 Q Let me ask you this, you mentioned that you  
19 talked about sort of the ins and outs of settlement,  
20 the who to go to, what to propose, are those things  
21 that you discussed with Mr. Conlan?

22 A Yes.

23 Q Did those discussions include along the way,  
24 throughout the time you were working with Mr. Conlan  
25 confidential discussions of how much the company might

1 be willing to pay to resolve the talc litigation?

2 A Absolutely, it was an important part of the  
3 conversation.

4 Q Did it include things as detailed, as for  
5 example, the future's only settlement in the Imerys?

6 MR. POLLOCK: Your Honor, can we have a point  
7 in time because the last one was a broad question.  
8 This time it's Imerys. I would like to get a point in  
9 time to know which case I'm talking about. Because I  
10 can't measure what information is confidential if I  
11 don't know which case it is and the time frame we're  
12 talking about.

13 THE COURT: Sure. Mr. Brody, give a date.

14 Q Sure. Did there come a time when you and Mr.  
15 Conlan were engaged in discussion of a potential  
16 future's only settlement?

17 A Yes. In the fall of 2020 Mr. Birchfield proposed  
18 an outside of bankruptcy settlement for the existent  
19 tort claimants and inside of bankruptcy future's  
20 settlement.

21 Q Was Mr. Conlan involved in the evaluation of  
22 that?

23 A That was, yeah, that was in the period of time  
24 when I was working with Mr. Conlan every day to  
25 evaluate proposals like that and we certainly worked on

1       that one extensively together.

2           Q       Was Mr. Conlan, in addition to yourself  
3       negotiating directly with the other side during that  
4       period?

5       A       Yes, he was talking primarily with the TCC's  
6       counsel and the FCR and the FCR's counsel, which of  
7       course were the most important parts of trying to get a  
8       future's only settlement in the bankruptcy. I didn't  
9       have those relationships like that.

10       Q       In the process of evaluating the potential  
11       for a future's only settlement, in the bankruptcy, was  
12       Mr. Conlan involved in confidential evaluation of what  
13       J&J might be willing to pay for such a settlement?

14       A       Yes.

15       Q       Did that include review of information  
16       prepared by J&J confidential consultants in the  
17       litigation?

18       A       Yes, and my firm as well, which was also analyzing  
19       that.

20       Q       Do you consider that work that you were doing  
21       at the time relevant to what is going on in the talc  
22       litigation today?

23       A       It's the same issues relevant to resolution today.  
24       Where, obviously, as you heard from Mr. Haas we're  
25       still actively trying to resolve this. We still have a

1 plan. We still have great support for a plan. All of  
2 the issues are the same. All of the issues remain  
3 relevant and all of the insight that we had back then  
4 is as important now as it was then.

5 Q And are you looking, I mean at the end of the  
6 day, are you looking for what ultimately will be a  
7 negotiated, and when you talk about that and you talk  
8 about that being important, are you talking about it  
9 being important to a negotiated resolution?

10 A I am not sure I understand the distinction that  
11 you're drawing. But every conversation that we had  
12 back then evaluating at first, just an outside  
13 bankruptcy settlement, then a half-in/half-out  
14 settlement. Then the Imerys settlement, then  
15 ultimately LTL is all still relevant to our thinking  
16 today, our approach today and the resolution that we're  
17 working on still today. That's what I would be doing  
18 if I wasn't sitting here testifying.

19 Q Have you been involved as outside counsel for  
20 Johnson & Johnson in the development of proposals that  
21 J&J has come up with to potentially resolve on a global  
22 basis the talc litigation?

23 A Yes, I have.

24 Q During the time that Mr. Conlan was working  
25 as outside counsel for Johnson & Johnson was he

1 involved in those discussions as well?

2 A Yes, he was.

3 Q Did those discussions to your recollection  
4 during the time that Mr. Conlan was working as outside  
5 counsel for Johnson & Johnson involved the company's  
6 evaluation of settlement matrices to come up with those  
7 proposals?

8 A Yes, it did.

9 Q And just to provide a little more detail for  
10 the benefit of the Court, what -- when you talk about,  
11 and just generally a settlement matrix in the context  
12 of a mass tort settlement, what are you talking about?

13 A Given the number of claimants, you're talking  
14 about an initial rough way to evaluate them, what are  
15 their age? What's their disease state? Is their  
16 cancer stage 1, 2, 3, or 4, things like that. So  
17 literally a grid with different base values based on  
18 some very, very, very basic facts about the claimants.

19 Q And the work that you did with settlement  
20 matrices back in that time period when Mr. Conlan was  
21 serving as outside counsel for Johnson & Johnson  
22 2020/2021, is the review and analysis of that  
23 information germane to the issues that you're dealing  
24 with in the top litigation today?

25 A It is. Back at that time, we had a -- we had a

1 Barnes & Thornburg created settlement matrix. We had a  
2 Beasley Allen created settlement matrix. We had a  
3 settlement matrix created by the Imerys Tort Claimants  
4 Committee that they put in their trusts distribution  
5 procedures. And Mr. Conlan had all of those and we  
6 were evaluating all of those, comparing and  
7 contrasting. So, Mr. Conlan knows all of my thoughts,  
8 all of the company's thoughts on those three proposals.  
9 Indeed, we heard testimony earlier about the most  
10 recent matrix put forward by the Legacy company, which  
11 you know, is an iteration of Beasley -- you know, Andy  
12 Birchfield and Beasley Allen's settlement matrix.

13 Q All right. In all of that time, I just want  
14 to get a sense for the benefit of the Court, of how  
15 involved Mr. Conlan was in the discussions about issues  
16 surrounding claim values, number of future claims,  
17 value of future claims, value of present claims, how  
18 involved was he?

19 MR. POLLOCK: Objection. First of all, it's  
20 compound. But second of all, I really at this point  
21 want details. I want to know what discussions occurred  
22 when. Mr. Murdica can keep on testifying, obviously,  
23 but I am concerned that I can't question about what I  
24 don't understand. He had discussions about settlement  
25 matrices. What discussions, when, where, who was

1 involved? All of these things.

2 THE COURT: I appreciate Mr. Pollock, your  
3 understanding or lack of understanding, what I'm  
4 interested in is does this witness understand the  
5 question? To the extent we can get a time frame, Mr.  
6 Brody?

7 MR. BRODY: Yeah, we it was an initial  
8 question and then we were going to zero in a couple of  
9 things.

10 MR. POLLOCK: Just to be clear, Your Honor,  
11 it's your courtroom and again I respect that greatly,  
12 but it's beyond time frame. It goes to the merits, the  
13 substance, because you're talking four years where  
14 Imerys, LTL, you're talking a massive upset with the  
15 Third Circuit, you've got all of these facts coming in  
16 at one time. I'm being told that there were  
17 discussions regarding each one of these concepts. I  
18 had no clue what those are. There's nothing in the  
19 record to support it. I am not doubting that these  
20 discussions occurred. I'm sure Mr. Murdica is telling  
21 the truth. But I can't measure what I can't see or  
22 don't understand. There's no records to support that  
23 testimony at all.

24 Q Let me ask this question.

25 THE COURT: Do you have a document?

1 Q I think maybe for everybody's benefit if I  
2 could ask Mr. Murdica, throughout the period that Mr.  
3 Conlan was working as outside counsel for Johnson &  
4 Johnson was the --

5 THE COURT: 2020?

6 MR. BRODY: July 2020 to the end of February  
7 2022.

8 MR. POLLOCK: Thank you, Your Honor.

9 Q Was the company internally, in a privileged  
10 and confidential context, evaluating claim values or  
11 present claims, potential number of future claims and  
12 the potential value of future claims in the talc  
13 litigation?

14 A That's been the case since early 2020 until the  
15 present case.

16 Q So, that was during the entire time that Mr.  
17 Conlan was outside counsel for the company. Right?

18 A That's correct.

19 Q And how involved was he in those discussions?

20 A I'll try to put a finer detail on it for Mr.  
21 Pollock. From the time that Mr. Conlan started working  
22 on talc, which was sometime in, I believe August of  
23 2020. He became very involved, to the point that we  
24 were having daily conversations. And Mr. Pollock it  
25 was first about your client's outside bankruptcy

1 proposal.

2 THE COURT: Could you address the Court, and  
3 not directly address Mr. Pollock?

4 THE WITNESS: I'm sorry, I was trying to  
5 answer his questions. It was first about an outside  
6 bankruptcy proposal which was a conversation we were  
7 having until about September 2020 to the best of my  
8 recollection. At that point in time, we pivoted to  
9 trying to do something in the Imerys bankruptcy. And  
10 at that point in time, Mr. Birchfield and I were all  
11 aligned on this and we could not get the approval of  
12 the full Tort Claimants Committee in the Imerys  
13 bankruptcy.

14 So, then we continued to pivot and tried to  
15 find an agreement that would work for a majority of the  
16 TCC in Imerys so that we could get the votes to move  
17 the plan forward. We came -- throughout this whole  
18 time I'm working very close with Mr. Conlan because  
19 he's now working for J&J and it's the two of us who are  
20 in charge of trying to get this resolution done.

21 At that point, we just keep modifying our  
22 proposal until by February of 2021 we were very close.  
23 And I remember it very specifically, I remember where I  
24 was because Joe Braunreuther was retiring on March 1st.  
25 We were trying to get this deal done and approved by

1 the TCC before he left the company because he worked so  
2 hard on it with myself and Mr. Conlan. It turned out  
3 that even though we were literally on the one yard  
4 line, we thought that we would get it done, we didn't  
5 get it done. Mr. Haas had been involved since the  
6 fall, since he came to J&J, but now he took over duties  
7 for talc.

8 By April 15th of 2021 we had a deal with the  
9 Imerys TCC which you heard about. He was asking about  
10 well why didn't you enforce it? There was -- we were  
11 led to believe that future claims representative had  
12 signed off on it. It turned out that it was only the  
13 Tort Claimant's Committee itself and it -- as well.

14 So during that entire time, Mr. Conlan and I  
15 were working hand-in-hand every day to try to deliver  
16 this for the company and report it to Mr. Braunreuther  
17 and Mr. Haas.

18 BY MR. BRODY:

19 Q During the period you mentioned around April  
20 of 2021, when you were trying to get this across the  
21 finish line, did J&J create a term sheet for what was  
22 being discussed and what you thought you were going to  
23 be able to get across the line?

24 A Yes, we had a term sheet that was signed off on by  
25 the Imerys TCC and the counsel for the Imerys TCC.

1 Q Prior to providing that term sheet to the  
2 TCC, was Mr. Conlan involved with you in privileged and  
3 confidential discussions of what that term sheet would  
4 look like?

5 A Absolutely.

6 Q Did that include, by the way, both ovarian  
7 cancer and Mesothelioma claim?

8 A I believe so.

9 Q All right. Did the proposal that was  
10 developed, that you were involved in the confidential  
11 discussions on, involve a presentation of a settlement  
12 group?

13 A It did, yes.

14 Q Were you involved in the creation and  
15 evaluation of that grid?

16 A I was.

17 Q Was Mr. Conlan?

18 A Mr. Conlan was involved in all aspects of the  
19 proposal and then following April, it was April 15th,  
20 2021 that we got TCC approval, Mr. Conlan was working  
21 on resolving any other issues that the future claims  
22 representative had to deliver the rest of the  
23 settlement. I know that he had many conversations with  
24 counsel and with the FCR over the next couple of months  
25 after that to try to get that agreement.

1           Q     So, Judge Porto and Judge Singh have heard a  
2     bit from Mr. Haas about how Mr. Conlan was personally  
3     involved in negotiating with the TCC and the FCR, in  
4     the Imerys bankruptcy. Just so that the record is  
5     clear on this, can you explain in that respect what his  
6     role was?

7     A     Yes, like I said, he was my counterpart for -- as  
8     resolution and bankruptcy counsel, because he was also  
9     bankruptcy lawyer, to try to deliver the settlement.  
10    So, when we were negotiating again, this was early  
11    2021, a lot was still done by Zoom, he had  
12    relationships with long-standing relationships with at  
13    least one of the Tort Claimants Committee lawyers in  
14    Imerys, so he would appear on those. He would  
15    negotiate separately and then he would negotiate with  
16    the future claims representative and the future claims  
17    representative counsel because they had been in many  
18    bankruptcies together and had a longstanding  
19    relationship.

20           Q     And was this one of the time periods early  
21    2021 when you were having daily or near daily  
22    communications with Mr. Conlan?

23    A     Yes, really that remained the case from when he  
24    started working for J&J until about, until very shortly  
25    after the bankruptcy filing in LTL. So to put a time

1 frame on it, after I would say October -- after the end  
2 of October 2021 I didn't work with Mr. Conlan on a  
3 daily basis anymore.

4 Q Okay. So pretty much up through the filing  
5 of LTL?

6 A And a couple of weeks beyond it, because we were  
7 working on potential mediation options within LTL at  
8 that point.

9 Q Okay. At the time that you and Mr. Conlan  
10 were talking in early 2021, when he was engaged in  
11 conversations with representatives or counsels for the  
12 TCC and the FCR in the Imerys bankruptcy, did you and  
13 he discuss negotiating strategies?

14 A Of course.

15 Q And you talked about imparting to him, you  
16 know, what you knew from your experience which pre-  
17 dated his in attempting to negotiate resolutions of the  
18 -- of the talc litigation for Johnson & Johnson. Did  
19 that come into play in those discussions that you were  
20 having with him?

21 A Well, it did, because it wasn't just talc. A lot  
22 of the lawyers in the talc litigation were lawyers that  
23 I resolved other mass torts with. This wasn't the  
24 first mass tort I've worked as J&J resolution counsel.  
25 In fact, Judge Porto, you may or may not remember I

1 resolved the hernia mesh MCL before you a year and a  
2 half ago.

3 THE COURT: Mesh.

4 Q At some point in July of 2021, do you recall  
5 negotiations with the TCC and the FCR over the Imerys  
6 plan becoming stalled?

7 A I didn't hear you on the time frame, but yes in  
8 the middle of 2021, we were making no further progress  
9 with the FCR as far as I could tell.

10 Q Right. I'm sorry, I referenced in my  
11 question July of 2021. Does that sound right?

12 A That sounds right. Yes.

13 Q Did you consider strategies for J&J in  
14 response to those negotiations becoming stalled?

15 A Of course. We were constantly working on  
16 resolutions.

17 Q Was Mr. Conlan involved in those discussions  
18 as well?

19 A He was, at that point, yes.

20 Q Do you consider those discussions at that  
21 time period as privileged and confidential discussions  
22 that are relevant to what is going on in the talc  
23 litigation today in 2024?

24 A Very much so, we were in a similar position that  
25 we were outside of bankruptcy. At that point, we were

1 considering a bankruptcy filing. And we were  
2 discussing all of our options that we had on the table,  
3 which is very much where we find ourselves today. It's  
4 the same situation.

5 Q Now were you involved in mediation in the LTL  
6 bankruptcy?

7 A I was. I was the lead for Johnson & Johnson in  
8 the LTL bankruptcy mediation.

9 Q Do you consider the privileged and  
10 confidential communications that you had with Mr.  
11 Conlan while he was outside counsel to Johnson &  
12 Johnson to be relevant to what you were dealing with in  
13 the LTL bankruptcy mediation?

14 A Yes, because the mediation was dealing with --  
15 it's the same thing, it's dealing with resolution we  
16 were trying to resolve it in mediation.

17 Q Now, you're aware that at some point in time,  
18 as we've discussed Mr. Conlan left the law firm of  
19 Faegre Drinker. Right?

20 A Yes.

21 Q And at the time he left do you know whether  
22 the LTL bankruptcy was pending?

23 A It would've been, yes.

24 Q Okay. And is that a time period in which you  
25 were involved in attempting to negotiate a resolution

1 within the bankruptcy structure?

2 A Yes, that was mediation in LTL-1.

3 Q All right. Were you also involved in  
4 mediation in LTL-2?

5 A I was, same role.

6 Q Did you know at the time that Mr. Conlan was  
7 communicating directly with Mr. Birchfield and other  
8 members of the Beasley Allen Firm about the talc  
9 litigation?

10 A I had no idea. Like, Mr. Haas, I found out for  
11 the first time two weeks ago that not only, had that  
12 been going on since April, that it was allegedly  
13 related to the mediation but as the lead mediation  
14 representative for J&J, I could tell you that I never  
15 heard a single thing about that until we got the  
16 privilege log two weeks ago. And I was kind of  
17 dumbfounded and I was in close contact with the  
18 mediators throughout the mediation, of course, because  
19 that was my job. And to my knowledge, the mediators  
20 didn't know either.

21 Q Okay. When you learned this a couple of  
22 weeks ago, were you concerned?

23 A I was extremely concerned. In my career, I've  
24 never seen anything like that.

25 Q All right.

1 A It would be as if, I, having negotiated the  
2 Prolene settlement while it's still pending and while  
3 we're trying to get to the 95% decided to quit and go  
4 become a consultant for the Plemming Firm. It's  
5 unimaginable to me that that could happen.

6 Q We've -- and just for the benefit of the  
7 Court in terms of your participation that you're  
8 referring to in mediation during the LTL, bankruptcy,  
9 the second time around, what time frame was that?

10 A That would've been in the May 2023 until it was --  
11 until the bankruptcy was dismissed in July of 2023 time  
12 frame.

13 Q Okay. Now we've talked about when Mr. Haas  
14 first learned via the October 18th, 2023 email that he  
15 got from Mr. Conlan, when he first learned that Mr.  
16 Birchfield was working with Mr. Conlan on this  
17 settlement matrix. When did you first learn that Mr.  
18 Conlan and Mr. Birchfield were collaborating?

19 A I think --

20 MR. POLLOCK: Objection to the use of  
21 collaborating.

22 MR. BRODY: Your Honor, it's just a question.  
23 He can tell me if I've gotten something wrong and it's  
24 open for cross.

25 THE COURT: I'll overrule the objection.

1 A To the best of my recollection I learned a few  
2 hours before that, because I was in Las Vegas at the  
3 Mass Torts Made Perfect Conference and numerous  
4 plaintiff's lawyers came up to me and started telling  
5 me about how the talc was going to settle via this  
6 Legacy plan that Andy was working on, because I -- I  
7 was told that he was telling people that at the  
8 conference. I heard about it and I immediately asked  
9 Mr. Haas what could possibly be going on, because it's  
10 the first time I heard of it.

11 Q So, all throughout the mediation process did  
12 anybody ever come to you and say, we're working with  
13 Jim Conlan on the plaintiff's side?

14 A No, I talked to Mr. Birchfield about it after  
15 that, in October, but not during mediation process.

16 Q All right. So, it was roughly you said a few  
17 hours earlier on October 18th that you first learned of  
18 this collaboration between Mr. Birchfield and Mr.  
19 Conlan?

20 A It may have been the night before but I learned it  
21 via other people coming up to me because they all know  
22 that I'm responsible for resolution of talc and saying,  
23 hey I heard this is settling and you know, they were  
24 told that we would have a resolution by November.

25 Q Okay. So, the Court has heard a bit about

1 the article that was published by Bloomberg that Mr.  
2 Conlan wrote on November 2nd of 2023, and that's at  
3 exhibit, I think it's 15 in the binder that you have in  
4 front of you?

5 A Yes.

6 Q And if you turn to tab six, there's a letter  
7 that you wrote there.

8 A Yes.

9 Q And you wrote this letter to Mr. Conlan?

10 A I did.

11 Q Okay. Why did you write this letter to Mr.  
12 Conlan?

13 A Well, a couple of reasons. One, I was asked to  
14 communicate with Mr. Conlan on it, but I felt compelled  
15 to because I read the article and I thought that the  
16 article was talking about the LTL bankruptcy, and I was  
17 afraid that Mr. Conlan was disclosing privileged  
18 information. So, I haven't read this probably since I  
19 wrote it. But, I essentially asked him to stop.

20 Q Okay. And it was -- I guess, we know from  
21 Mr. Haas's testimony and from the exhibits that are in  
22 the record that it was just four days after you wrote  
23 that letter that Mr. Conlan sent his letter to the  
24 board of directors. Right?

25 A That's right.

1 Q Did you review the letter at the time, that  
2 he sent to the board of directors?

3 A It eventually made it's way to me, likely via Mr.  
4 White or Mr. Haas, and I did read it.

5 Q In the letter Mr. Conlan represented that he  
6 had already discussed the proposal with lead counsel  
7 for the talc plaintiffs. Right, and that's tab -- it  
8 should be tab seven.

9 A Right.

10 Q Did you have any idea that Mr. Conlan had  
11 been working with Mr. Birchfield for six months at that  
12 point?

13 A No, my presumption at that point was that sometime  
14 after the dismissal of LTL-2 they had talked and that's  
15 why I heard at that conference in Las Vegas, on October  
16 18th or 17th, that this was something they were working  
17 on together.

18 I assume the same thing on November 9th, it wasn't  
19 until two weeks ago when we got that privileged log  
20 that I realized that they had been working closely  
21 together for more than six months and I believe there  
22 were hundreds of entries on the privilege log that we  
23 can't see but it -- there was a lot of collaboration,  
24 or contact, or whatever word you want to use.

25 Q Mr. Birchfield never disclosed that to you?

1 A To the best of my knowledge, no and I was  
2 genuinely shocked and surprised when I learned that, so  
3 I can't imagine I ever would've known.

4 Q No one else from Beasley Allen disclosed that  
5 to you?

6 A No.

7 Q Nobody else on the plaintiff's side of the V  
8 in this litigation disclosed that to you?

9 A I truly had no idea and I definitely, I was also  
10 shocked to see that it was claimed to be part of a  
11 mediation because it never came up in the mediation.

12 Q All right. Thank you, Mr. Murdica.

13 THE COURT: Thank you.

14 MR. POLLOCK: Can we take a five-minute  
15 break?

16 THE COURT: We're going to take a ten-minute  
17 break.

18 (Recess taken from 3:26 to 3:40)

19 THE COURT: You may be seated. Everyone may  
20 be seated. Cross examination, Mr. Pollock?

21 MR. POLLOCK: Yes, Your Honor.

22 THE COURT: You may be seated.

23 THE WITNESS: Thank you.

24 MR. POLLOCK: May I ask the Court and  
25 opposing counsel a critical question, it is currently

1 3:41, let's assume I move quickly, done by 4:15, and  
2 then I assume Mr. Brody who is a capable lawyer may  
3 have some redirect. That's going to put us around  
4 4:30, 5:00 or so.

5 THE COURT: I would prefer not to go passed  
6 4:30. I don't want to go passed five o'clock. But it  
7 looks like we're not going to finish today.

8 MR. POLLOCK: So, can we reconvene tomorrow?

9 THE COURT: I don't necessarily know Judge  
10 Singh's schedule accommodates that. Mine doesn't. I  
11 don't think we were really planning on consecutive  
12 days. But --

13 MR. POLLOCK: Okay. It's so much fun  
14 together.

15 THE COURT: Pardon?

16 MR. POLLOCK: It's so much fun together.

17 THE COURT: Well it is and I've spent the  
18 last four weeks in this particular courtroom on another  
19 matter, on another mesh matter.

20 Why don't we put our heads together. We'll  
21 leave today, we can't do consecutive days. But we'll  
22 have to look at our calendars, Judge Singh and I are  
23 going to have to look at our calendars also and we'll  
24 tell you the week of the 15th of April I have speaking  
25 commitments. We have a Civil Chancery seminar

1 statewide that week, and I'm doing something at the  
2 Boardwalk seminar. So that week is out. We'll put our  
3 heads together Mr. Pollock and Mr. Brody.

4 MR. POLLOCK: Thank you, Your Honor.

5 THE COURT: Okay.

6 MR. POLLOCK: Okay, I'm ready to proceed,  
7 Judge.

8 THE COURT: Sure.

9 CROSS EXAMINATION BY MR. POLLOCK:

10 Q Mr. Haas, we have met before, my name is  
11 Jeff.

12 MR. SABO: Murdica.

13 Q I'm sorry, Murdica. The other guy. I just  
14 gave you a pay raise. I'm sorry. Mr. Murdica, I  
15 apologize, I'm still Jeff or Mr. Pollock, whatever you  
16 want. You mentioned before a term sheet and I think it  
17 was in the Imerys matter. Do you recall the term sheet  
18 discussion?

19 A I believe Mr. Pollock, you're referring to my  
20 testimony about the April 15th, 2021 term sheet in the  
21 Imerys matter.

22 Q Correct.

23 A Is that right? Okay.

24 Q Am I correct in understanding that that  
25 document was not fully executed?

1 A There were no signatures on it, however, it was  
2 represented by counsel to the Tort Claimants Committee  
3 that those terms had the support of the Tort Claimants  
4 Committee and in fact, we even exchanged example  
5 scenarios because there was a refund portion of it and  
6 everything. While it wasn't signed, because the FCR  
7 hadn't signed off on it, it was agreed to by a majority  
8 of the Tort Claimants Committee and their counsel.

9 Q Excellent. With regard to your own work,  
10 there's a thing called Thomson Reuters, which allows me  
11 to be snoopy and look at what people do as lawyers.  
12 And it indicates that you spend about 66.9%, which is  
13 pretty precise by the way, of your matters for J&J.  
14 And then it has McKesson and Walgreens, and some other  
15 folks at 4.8 and 3%, give or take 5%. Does that sound  
16 about right, that over half your work is for J&J?

17 A I don't think you're data is right. I haven't  
18 represented McKesson in at least a decade. However,  
19 way more than half of my work is for J&J.

20 Q Excellent. You actually knew Mr. Haas, now I  
21 get the names right, I got it wrong before, from the  
22 fact that you both worked together at Patterson,  
23 Belknap, Webb & Tyler. Correct?

24 A That's correct, we were both partners at Patterson  
25 Belknap.

1 Q Excellent.

2 MR. POLLOCK: If you don't mind if I sit  
3 down, Judge?

4 THE COURT: That's fine.

5 Q Getting to the core question before the  
6 Court, which is RPC 1.6, are you familiar with Rule of  
7 Professional Conduct 1.6?

8 A I don't know the exact terms of it, but I know  
9 that rules are at issue.

10 Q So, the Rule of Professional Conduct 1.6 and  
11 it's more wordy than I say, is that you cannot disclose  
12 confidential information. That concept is pretty  
13 basic, right?

14 A It seems it to me.

15 Q So, especially as a lawyer. Right?

16 A Especially as a resolution lawyer.

17 Q Excellent as a resolution lawyer. Can we  
18 agree that other than the records before us, you do not  
19 have any email from Mr. Conlan to Mr. Birchfield, you  
20 don't have any memos from Mr. Conlan to Mr. Birchfield,  
21 you don't have any photos of Mr. Conlan and Birchfield  
22 in compromising positions. You've got nothing out  
23 there that discloses -- that they disclosed  
24 confidential information belonging to J&J?

25 A Mr. Pollock the only way I could answer that is

1 that in the last two weeks, I've seen a privilege log  
2 that has hundreds of logged emails that are between Mr.  
3 Conlan and Mr. Birchfield and it says the subject  
4 matters and the subject matters included a claimant  
5 grid and all of the very confidential information that  
6 we were talking about. And I can tell you, as somebody  
7 whose done almost exclusively Mass Tort resolution for  
8 the last decade that it would be impossible to jump and  
9 talk to the other side and separate in my brain  
10 everything that I've learned by representing J&J to  
11 suddenly be pure of mind and not disclose confidential  
12 information. I can't think of any possible way that's  
13 the case.

14 Q So since you went to the hypothetical, I'm  
15 going to go hypothetical, let's assume you left  
16 tomorrow and you decided to become something else. You  
17 were going to decide, you were going to start your own  
18 talc business -- that's probably a bad choice these  
19 days. You're going to choose something else, a steel  
20 business, you're going to do anything else.

21 A Yes, sir.

22 Q Isn't it true that when Mr. Conlan -- if I  
23 take that same paradigm and I apply it to Mr. Conlan,  
24 he switched out completely, he spent 32 years with  
25 Sidley and Austin. Right, about?

1 A I heard that testimony.

2 Q Okay. So, he spent a long time at Sidley and  
3 Austin. Then he went to Faegre. Right?

4 A Right.

5 Q And at that point he decided had enough, I'm  
6 starting my own company Legacy. Right?

7 A Right.

8 Q So, he goes to Legacy and Legacy is a  
9 completely different deal. Legacy the idea is I've got  
10 Warren Buffet, Napollo investing, and all of these  
11 fancy guys behind me. What I'm going to do is go out  
12 and buy the kind of mass tort claim that you have  
13 yourself, that you address in your professional career.  
14 Right?

15 A Well I know that's what he did. And I know that  
16 they've pitched that idea about talc to J&J and I know  
17 that he pitched that same idea to J&J, I believe when  
18 he was working for J&J as one of the options.

19 Q And there are other companies who compete  
20 with Legacy. Right? There are other entities that J&J  
21 has communicated with over the past four years, about  
22 possibly trying to sell out, pass off, whatever you  
23 want to call it, it's liabilities in order to get it  
24 off the spreadsheet. Correct?

25 A I understand, and that's why to me it was

1 particularly shocking that Legacy with our former  
2 counsel is the one that they would choose to talk to if  
3 they were really trying to talk to a company that did  
4 that during the mediation.

5 Q But J&J never got a single offer from any  
6 other company like Legacy gave an offer which, to the  
7 documents that you referred to, Legacy is the only one  
8 who said I got a proposal for you.

9 A I don't know if that's the case. But I know to my  
10 knowledge we never solicited a proposal from any such  
11 company.

12 Q But you do know that other companies have  
13 approached J&J or J&J's had discussions with them and  
14 Legacy is the only one that said we think we have a  
15 viable way of doing this?

16 A I don't know that other companies have approached  
17 J&J. That probably would've been a better question for  
18 Mr. Haas. But I can tell you, the only one I know  
19 about is Legacy, because of course, we didn't solicit  
20 that.

21 Q So, when Mr. Conlan is sitting in his new  
22 role and his new role is I am going to potentially --  
23 and we can actually go through it if it makes you more  
24 comfortable sir, let me find it here more quickly while  
25 I fumble. It's going to be exhibit seven.

1 A Yes, sir.

2 Q And Mr. Haas, you were involved in LTL.

3 Right?

4 A Murdica.

5 Q I'm sorry. I apologize.

6 A That's okay.

7 Q Mr. Murdica, you were involved in the LTL.

8 Right?

9 A I was the lead counsel for the mediation in that.

10 Q Excellent. So, the two experts I talked

11 about before, you're familiar with their opinions.

12 Correct?

13 A I have consulted with Mr. Mullin, as I testified

14 on direct regarding some of the settlement information

15 and claims information when I was working with Mr.

16 Conlan. I don't believe that I reviewed his report or

17 the other expert that you mentioned.

18 Q Lead counsel and you didn't read the expert

19 reports?

20 A Lead counsel for the resolution, for the

21 mediation. I am not litigation counsel in talc.

22 Q I apologize. Fair enough. Now I cleared up

23 my misunderstanding. I'll represent to you that in

24 those documents they indicate that the range for

25 resolution for J&J and this is J&J's expert is between

1       \$12 and \$21 billion. The -- in this case, on the  
2       document that Legacy has \$19 billion or such greater  
3       amount as determined by J&J's independent auditors.

4               So, is there any reason in your mind to  
5       believe that Legacy was working with your experts?

6       A     I have no reason to believe, I don't know  
7       otherwise that Legacy was working with our experts.  
8       And I heard you ask Mr. Haas those questions. I'm not  
9       sure where those numbers came from. I certainly  
10      wouldn't subscribe to them. I know from having this  
11      role that talc can settle for the amount that was on  
12      the table, but for the TCC who were the objecting party  
13      in LTL-2.

14           Q     So, the \$19 billion, do you believe that that  
15      was a contrivance by Andy Birchfield?

16      A     I have no idea where that came from, but I know  
17      that that's not what it takes to resolve talc  
18      litigation.

19           Q     Okay. So, it's not what J&J wants. It's not  
20      what you believe is the right number. Correct?

21      A     No, I'm referring to the work that I actually did,  
22      which was to get the lawyers representing the talc  
23      claimants to negotiate with me and come up with an  
24      agreed plan, and come up with the number. It's not a  
25      dispute. It's the actual amount of money that it would

1 have taken at that time to resolve the talc claims if  
2 the claims had been -- if it had been brought to a  
3 vote, unfortunately it was not brought to a vote,  
4 because there was opposition by your client and others  
5 in the bankruptcy.

6 Q Mr. Murdica, you have better knowledge of the  
7 case than I do, so I'm going to have to back you up a  
8 little tiny bit there.

9 A Sure.

10 Q You said at the time and there was a vote,  
11 are you talking Imerys or are we talking LTL?

12 A So, we can talk about anyone you want. I was  
13 referring to LTL-2.

14 Q Okay.

15 A The difference between the first bankruptcy and  
16 the second is that in the second bankruptcy we filed  
17 along with the support of more than 60,000 -- along  
18 with the support of the lawyers representing more than  
19 60,000 claimants. And I know from the settlement  
20 communications that I had, that there was far more  
21 support than that. All we had to do was be able to get  
22 to a bankruptcy vote, which we were not able to do  
23 because the objectors prevented that.

24 Q Were two of the people you spoke with Mr.  
25 Andre and Mr. Nokawati (phonetic)?

1 A Those are two of many, yes.

2 Q And those two had big chunks of -- a big hunk  
3 of cases. Right?

4 A Approximately 5,000 and 20,000 claimants  
5 respectively.

6 Q So, 25,000 let's call it. It's a pretty big  
7 number. Right?

8 A It is. It's about a quarter of the claims that I  
9 expect to vote, when there ultimately is a resolution  
10 vote.

11 Q And you understood when you Mr. Andre and Mr.  
12 Nokawati that they were members of the Talc Claimant's  
13 Committee. Correct?

14 A So, they weren't in the second bankruptcy, because  
15 they had -- they had joined to support the plan put  
16 forward in the second bankruptcy. They were not  
17 included on the Tort Claimants Committee.

18 Q Okay. What role did they play in the second  
19 LTL?

20 A Well, they actually testified in favored of the  
21 plan prior to the dismissal. They represented their  
22 claimants on -- there was an *ad hoc* committee of  
23 supporting counsel and what they had to do in addition  
24 to supporting the plan, is that Judge Kaplan ordered  
25 that they not only tell all of their clients that they

1 were being represented by them in the bankruptcy, but  
2 that Mr. Nokawati and Mr. Andre were supporting the  
3 plan forward in the bankruptcy because Judge Kaplan  
4 wanted to make sure that all of the claimants that were  
5 in support of the plan had an understanding that their  
6 counsel was making that representation.

7 Q So, let me wind this back for a second, LTL-  
8 1, they were on the Tort Claimants Committee then.  
9 Correct?

10 A You're referring to Mr. Andre and Mr. Nokawati,  
11 yes.

12 Q Yes.

13 A They were.

14 Q And you spoke to them at that point in time  
15 when they were on the Tort Claimants Committee for LTL-  
16 1?

17 A I spoke to them before they were on the committee.  
18 I spoke to them after they were on the committee and  
19 while they were on the committee because that was my  
20 job and they were part of the bankruptcy mediation in  
21 the first bankruptcy.

22 Q Excellent. And I want to focus on LTL-1, not  
23 LTL-2. Fair enough. Do you understand where I'm  
24 focusing?

25 A I'll answer whatever you ask me as long as my

1 counsel doesn't object.

2 Q I appreciate it, sir. So, during the course  
3 of LTL-1, you understood that they were on the Tort  
4 Claimants Committee and you understood that Tort  
5 Claimants Committee had put a number on this over the  
6 \$9 billion that J&J wanted to resolve this matter at.  
7 Correct?

8 A At various points, I think you heard Mr. Haas's  
9 testimony earlier, that at some point -- I believe it  
10 was June of 2022, through mediation and I don't want to  
11 violate the mediation privilege that you were  
12 referencing earlier, but there was a -- the Sunday  
13 night deal that Mr. Haas was referring to with the Tort  
14 Claimants Committee that we understood was a deal for  
15 \$8.9 billion.

16 Q Correct, and that's what -- and that -- I'm  
17 sorry. So, let's assume that that's right, with regard  
18 to that number, you understood that the other members  
19 of the Tort Claimants Committee did not want the \$9  
20 billion, let's call it 8.9, I'll call it \$9 billion  
21 just for shorthand. They did not want the \$9 billion.  
22 They thought it should be higher. Correct?

23 A So my understanding at that time, and what you  
24 heard Mr. Haas testify to and what I understood from  
25 the mediators is that \$8.9 billion got the majority of

1 the Tort Claimants Committee which -- that's how it  
2 works. So, the majority were in support at that time.

3 Q And the -- so if Mr. Birchfield was to say  
4 that the Tort Claimants Committee wanted the \$19  
5 billion number, and that there was not the majority of  
6 people that wanted the \$19 billion number you believe  
7 that would be false testimony?

8 A Yes, particularly because nobody was saying \$19  
9 billion at the time. What you have to understand, Mr.  
10 Pollock, is this was a negotiation that literally has  
11 gone on in phases for years and keeps turning and  
12 morphing as different things happen in the efforts to  
13 resolve. But there was no one in June of 2022 saying  
14 that it took \$19 billion to resolve this, nobody. So  
15 that would be a lie.

16 Q Fair enough. Let me move onto your exhibit  
17 14 if you don't mind. It's going to be exhibit 14, and  
18 I'm going to be referring -- you're welcome to any  
19 document I refer you to review the entire document,  
20 should you so desire. I'm going to point you to the  
21 portion that I care about just to move things along.  
22 Understood?

23 A Yes, sir.

24 Q Paragraph eight, you say on November 5, 2023  
25 I wrote a letter to Mr. Conlan on behalf of J&J

1 expressing J&J's concerns that Mr. Conlin was  
2 improperly discerning J&J's confidences that he learned  
3 in the course of his privileged attorney/client  
4 relationship with the company. Do you see that?

5 A I do.

6 Q Now, you then write a letter and it's exhibit  
7 six, I thought about this ahead of time, exhibit six.  
8 And this is your letter to Mr. Conlin, saying Dear Jim,  
9 you learned -- and I'm looking at the last paragraph,  
10 first page, you learned highly privileged information  
11 about J&J and LTL strategies from the attorney/client  
12 relationship and will publish the disparaging your own  
13 legal strategy that you recommended to J&J might be  
14 permissible if J&J or LTL were not included in the  
15 article.

16 Do you see that?

17 A I do.

18 Q Now, is it your position that it was Mr.  
19 Conlin's idea to use the Texas Two Step and LTL?

20 A Yes, that was one of the options that he presented  
21 to myself and Mr. Haas.

22 Q So, prior to LTL being filed, it's your  
23 position that he suggested we use the Texas Two Step?

24 MR. BRODY: Objection, Your Honor. I just if  
25 the question is was Mr. Conlan involved in discussions

1 of the idea, yes or no, that's fine. But if we get  
2 into the specifics of what was Mr. Conlan's position on  
3 it, what was the back and forth, the substance of the  
4 evaluation --

5 THE COURT: I don't think that's where Mr.  
6 Pollock is going.

7 MR. BRODY: All right. I have privileged  
8 objection if that's where it goes.

9 THE COURT: Sure. Am I right, Mr. Pollock?

10 MR. POLLOCK: You are right, I think.

11 Q Here's the issue I've got, it says your own  
12 legal strategy, that's the phrase you used.

13 A Yes.

14 Q Am I correct that you're saying that filing  
15 of LTL was Jim Conlan's legal strategy?

16 A To the best of my recollection and I recently seen  
17 an email written by Mr. Conlan --

18 MR. BRODY: I'm sorry. I don't want you to  
19 -- Mr. Murdica --

20 THE COURT: No attorney/client privilege  
21 disclosure.

22 THE WITNESS: Okay.

23 Q How about this, a yes or no --

24 MR. BRODY: I don't want you to go into the  
25 substance of a communication that Mr. Conlan made on

1       this while he was counsel for J&J. I apologize for  
2       cutting you off.

3             Q       How about a yes or no?

4       A       A Two Step bankruptcy is one of the options that  
5       Mr. Conlan suggested multiple times to resolve our talc  
6       liability.

7             Q       I just want to be clear on one thing, is this  
8       before it was filed or after it was filed?

9       A       Before it was filed.

10            Q       Thank you, sir. With regard to there's a --  
11       in this letter you wrote, this actually comes out of  
12       your certification which is, I had it here a second  
13       ago, let's try 14. Someone just yelled it at me, so  
14       it's got to be right.

15       A       It is.

16            Q       Exhibit 14, in exhibit 14, you say -- I think  
17       I just had the damn thing. I'm sorry.

18                    That he proposed -- I'm sorry, I'm struggling  
19       here.

20       A       You were on paragraph eight before.

21            Q       Paragraph seven, it's paragraph seven, I  
22       think. Right? No.

23                    THE COURT: Paragraph eight was a letter that  
24       Mr. Murdica addressed to Mr. Conlan.

25                    MR. POLLOCK: Yeah, I'm sorry, I'm struggling

1 here Judge. I apologize.

2 THE COURT: Take your time.

3 Q Yes, paragraph eight. So, paragraph eight  
4 and when you signed this certification the  
5 certification which is exhibit 12 you were attempting  
6 to be truthful, accurate, and complete. Right?

7 A Of course.

8 Q And in paragraph eight you mentioned that you  
9 wrote a letter, Mr. Conlan wrote a letter, I wrote a  
10 letter to Mr. Conlan, that's exhibit six. But you  
11 don't include Mr. Conlan's response, do you?

12 A I didn't include Mr. Conlan's response. He  
13 responded something to the effect of, Jim, you should  
14 call me, because this would be a really great option  
15 for J&J.

16 Q Wasn't it a little stronger than that, that  
17 he completely disagreed with the characterizations that  
18 you made?

19 A If you show it to me, I'm happy to testify about  
20 it. What I specifically remember is that he wrote me  
21 back, and he said something, at least part of it said  
22 Jim give me a call and then we texted it about setting  
23 up a call and then it never happened, because I was in  
24 court the next day, or somehow our wires got crossed.  
25 But I never ended up speaking to him.

1           Q     So, you don't believe that when he responded  
2     to your letter of November 5, two days later that he  
3     directly controverted the argument that he had violated  
4     the attorney/client privilege?

5     A     He very well may have, Mr. Pollock. If you show  
6     it to me, I'll tell you. I'm sure that's his position.

7           Q     But you don't recall?

8     A     I don't. What I remember is that I was going to  
9     talk to him and it didn't happen.

10          Q     In hindsight, do you think it would've been  
11     worthwhile telling the Court that while this is your  
12     letter of November 5, that Mr. Conlan refuted that  
13     position and disagreed with you?

14     A     Mr. Pollock, I don't understand why it's very  
15     clear to everybody here that Mr. Birchfield and Mr.  
16     Conlan are saying that there's no violation here.  
17     You've been saying it over and over.

18          Q     Right, but this is simultaneously at the same  
19     time, it's contemporaneous with the statement. It's  
20     two days later. He directly controverts what you have  
21     to say and yet you choose to leave that one out. Why?

22     A     I didn't choose to leave it out, Mr. Pollock. Had  
23     I know at the time -- when I wrote this letter, it was  
24     just to get him to stop the things that he was doing.  
25     Had I known at that time that he had been working with

1 Mr. Birchfield for six months, the letter would've been  
2 very different.

3 Q You mentioned that -- you and Mr. Haas both  
4 have mentioned that Mr. Conlan and Mr. Birchfield were  
5 working together for a while, they were working  
6 together for six months. Hadn't Mr. Conlan been  
7 meeting with people at J&J off and on for months before  
8 that on behalf of Legacy attempting to present a  
9 resolution that might take the liabilities for talc off  
10 of the J&J balance sheets?

11 A Mr. Pollock, not with me. But I heard Mr. Haas's  
12 testimony about one meeting. And I also heard that it  
13 was never disclosed during any meeting that he was  
14 working with Mr. Birchfield and they had been doing so  
15 for six months.

16 Q Well you reviewed the emails -- the binder  
17 here, the evidence record is pretty thin. I assume,  
18 being a capable lawyer at Barnes and Thornburg you  
19 reviewed these documents in advance of appearing here  
20 today. Right?

21 A I can't say that I reviewed all of them, but I  
22 reviewed my declaration that you just referenced.

23 Q Okay. Well, if we go to exhibit four, this  
24 is Jim Conlan to VanArsdale, Douglas Dachille and some  
25 other folks on October 18, 2023. Trailing is a series

1 of other communications, right, October 6th, 2023;  
2 behind that September 8, 2023; we go back to August 21,  
3 2023, so we've got a series of communications between  
4 Plenary Hearing 23 and Plenary Hearing 27, where Mr.  
5 Conlan is working with the board at J&J or members of  
6 the leadership let's say of J&J. Correct?

7 A So, I was not on any of these, Mr. Pollock. And I  
8 don't know, I mean that's your characterization of  
9 them. I heard Mr. Haas's testimony and I see what's in  
10 the documents and I don't see them working  
11 collaboratively with the board or anything like that.  
12 I see a couple of sparse communications and ultimately  
13 a rejection.

14 Q So, let's take them one-by-one. Plenary  
15 Hearing 26, this is from Dwayne VanArsdale to James  
16 Conlan -- to Doug Dachille with a cc to James Conlan,  
17 thanks for the note and nice to meet you as well. I've  
18 copied Erik Haas and Andrew White who would also like  
19 to join the discussion. I'll ask Darlene, copied here,  
20 to coordinate and propose a few dates to get us  
21 together in the future. We'll get back to you shortly.  
22 Do you see that?

23 A Mr. Pollock, I see that and it looks to me like  
24 somebody at JP Morgan was perhaps doing a favor for Mr.  
25 VanArsdale making the introduction to somebody at J&J

1 and then J&J writing back, nice to meet you. That's  
2 all I see.

3 Q And you see James Conlan, Legacy Liability.  
4 Right?

5 A Correct.

6 Q It's in the third -- it's a cc there.

7 A Yes.

8 Q No one at J&J set off fireworks, alarms, you  
9 called the FBI, called the Ethics Committee and said  
10 wait a minute, James Conlan is working on this matter.  
11 Isn't that correct, no one said a word?

12 A As far as I know that's correct, although Mr.  
13 Conlan had suggested in addition to the two step  
14 bankruptcy this was one of the menu of options that he  
15 provided for us strategically while he was working for  
16 us too. So for him to suggest that now, not in the  
17 context of working with plaintiffs, I imagine it wasn't  
18 surprising. But again, I was not on these.

19 Q So, it was okay, I know you keep on looking  
20 at Mr. Haas, but with regard to this --

21 A Actually, I'm not looking at Mr. Haas. I'm  
22 looking at you and I'm looking at Mr. Birchfield.

23 Q Fair enough. With regard to the statement  
24 here, all he's doing is reaching out saying we would  
25 like to talk. J&J understands quite clearly he is no

1 longer at Faegre. Mr. Haas has already testified to  
2 that. He is now working for Legacy Liability. That's  
3 his -- that's his position. He has an email Legacy  
4 Liability. Did anyone at J&J, have you ever heard said  
5 oh my God, Jim Conlan is still involved in asbestos on  
6 behalf of Legacy Liability?

7 A Are you talking about in August of 2021?

8 Q I'm asking in August of 2021, did anybody  
9 ever say oh my God, he's still involved in asbestos?

10 A I did not hear that.

11 Q I'm sorry, 2023. I apologize.

12 A Mr. Pollock again, I did not hear that in August  
13 of 2023.

14 Q Excellent.

15 A As you can see I am not on these emails.

16 Q You're not. That's true. But you were, as  
17 you pointed out earlier talking routinely with Erik  
18 Haas. You were going to partner at Patterson Belknap  
19 with Mr. Conlan. You had worked with Mr. Conlan all  
20 the time. You worked with him regularly and discussed  
21 all kinds of issues. And yet, you're telling me on  
22 August 21, Plenary Hearing 26; August 24; September  
23 28th, all the way through to what is it, October 18, on  
24 Plenary 2023, at no point did anyone ever say from J&J  
25 Mr. Conlan it's outrageous that you have started your

1 own business to try and resolve disputes?

2 A I would say you would have to ask Mr. Conlan. But  
3 I can tell you in my role the first time I heard about  
4 Legacy being involved with talc to the best of my  
5 recollection was as I described in Las Vegas on October  
6 17th, 2023.

7 Q All right. And you talked about earlier  
8 about the mediation documents that were going back and  
9 forth. There is -- is there any information -- do you  
10 have any facts, whatsoever, other than the fact that  
11 Mr. Conlan and Mr. Birchfield were communicating, do  
12 you have any information in your possession, custody or  
13 control to establish that they exchanged J&J's  
14 confidential information?

15 A Yes, as I testified earlier, Mr. Pollock, if you  
16 take a look at that privilege log it has descriptions  
17 of what the documents are. And the descriptions are  
18 negotiations about claims matrices and other things  
19 that were the exact subject of what Mr. Conlan and I  
20 worked on together while he was representing J&J. And  
21 as I told you, I can tell you as somebody who does this  
22 every day, there is no way to separate what you learn  
23 from a client and then suddenly have it magically  
24 disappear while you're advising somebody else on a plan  
25 that might work for Legacy. It's just not real.

1           Q     So you're saying the facts between 2021 and  
2     2024 completely stale, no additional plaintiffs, no  
3     additional change in the legal landscape, no changes  
4     whatsoever. It's the same discussion you were having  
5     in 2021 as you were having in 2024 regarding J&J's talc  
6     liability.

7           A     I think you mean 2023 and Mr. Pollock, even though  
8     the filed claim numbers have increased, those claims  
9     already existed, they were just on file. It literally  
10    is the same thing we were doing back when Mr. Conlan  
11    was engaged, nothing has changed. He had insight to  
12    all of my strategy, all of Erik's strategy, all of Mr.  
13    White's strategy, Joe Braunreuther's strategy. But the  
14    J&J executive suite and everything we were thinking,  
15    and our strategy to deal with talc.

16          Q     You mentioned when you were testifying on  
17    direct that there were multiple matrices, those are the  
18    words that you used. And am I correct that there were  
19    matrices that you and Mr. Conlan prepared apparently or  
20    discussed, that there were matrices that Andy prepared  
21    and discussed. There were matrices proposed by the  
22    Talc Claimants Committee. There were all kinds of  
23    matrices flying all around. Is that true?

24          A     Well no, there weren't all kinds of them. There  
25    were three specifically that I remember. There was one

1 created by Mr. Birchfield. There was one created by  
2 myself and my partner, Kendra Lounsberry, and there was  
3 one created by the Imerys Tort Claimants Committee  
4 through their proposed trust distribution procedures.  
5 Those are the three that we were discussing at the  
6 time.

7 Q And those matrices changed over time as the  
8 numbers changed. Right?

9 A They don't change over time as the numbers change,  
10 they -- there were different concepts as to what  
11 categories should things be broken down into and what  
12 values, and what claims are we going to value or not  
13 value at all.

14 Q And you have -- in this matter, did you  
15 review the filing that was made to disqualify Mr.  
16 Birchfield before it was filed? Did you review these  
17 documents?

18 A That I --

19 MR. BRODY: Your Honor, I'm sorry, but asking  
20 J&J's outside counsel whether he reviewed something and  
21 was involved in the work product that went into a  
22 brief, I think is one, protected by work product, and  
23 two, it's completely irrelevant to the issue that we're  
24 talking about here.

25 THE COURT: Well I think his response is if

1 he reviewed it, yes or no. That's not work product.

2 MR. BRODY: That's fine, yes or no, I think  
3 is fine. I agree with that, Your Honor.

4 BY MR. POLLOCK:

5 Q So, yes or no, did you review the filing  
6 before it was made?

7 A Unfortunately, Your Honor, I can't give a yes or  
8 no. I honestly can't remember. It's possible. I am  
9 not sure.

10 Q Excellent. The Legacy Liability portion  
11 which is exhibit seven, has a matrix at the end.

12 A Yes.

13 Q Wait until you're there, Mr. Haas -- Murdica.  
14 Murdica. I'll get it right by the end of your  
15 testimony.

16 A No worries.

17 Q By the end -- with regard to that chart --

18 A Yes.

19 Q -- do you know if that was a J&J document?  
20 Did J&J prepare this document?

21 A Originally?

22 Q No, this document the one right here, the one  
23 that's Plenary Hearing 67. That's the only one I care  
24 about, was that one prepared by J&J?

25 A I created a matrix in 2020 that looks identical to

1 this but for the values.

2 Q Okay. So the values matter. This document,  
3 with these values, at this number, am I correct this is  
4 not a J&J document? This document.

5 A I can't answer it better than I did. I -- to the  
6 best of my recollection I have seen this -- the column  
7 at the top, that's stage four, stage three with  
8 recurrence and the age groups. It's something I  
9 originally worked on with Mr. Birchfield, but we  
10 created a matrix just like this. This very well maybe  
11 what we were using back in 2020 that Mr. Conlan weighed  
12 in on.

13 Q So a Honda looks a lot like a Ford. They  
14 both have four wheels. They have doors. They have  
15 windows. They have an engine. They have everything.  
16 I want to know is this document a J&J, not some  
17 variation, I want to know if this document, the one  
18 that they're complaining about so bitterly, you heard  
19 Mr. Haas, I got it right this time, complain bitterly  
20 that that was a privileged and confidential super  
21 secret information. I want to know under oath sir, is  
22 that document the one specifically right in front of  
23 you, is that a J&J document?

24 A So, Mr. Pollock, I think what you heard is that  
25 everything that Mr. Conlan learned about the way we

1 view a matrix like this for talc, is what's problematic  
2 that is being shared. I can't tell you for certain  
3 that this is our document. I know it's not our values.  
4 But what I would suggest, and I guess we'll get to hear  
5 from them, is I would ask Mr. Birchfield and Mr. Conlan  
6 how this document came together, because it is  
7 certainly has the same categories as the ones that we  
8 were negotiating back in 2020.

9 Q So, let's talk about that. During Imerys and  
10 during LTL, didn't all the charts pretty much have the  
11 same things, how are you, what kind of condition do you  
12 got, and what are the numbers we're starting to play  
13 with. Right? Isn't every -- you've done, I don't  
14 know, vaginal mesh, I don't know what else you've done,  
15 doesn't every matrix look the same thing. You look at  
16 age group, you look at what the exposure is, you look  
17 at the risk factor is, whether they can have children  
18 or not and you create a matrix. I don't think it's  
19 rocket science.

20 So, I'm trying to figure out what is unique  
21 about this chart that is so privileged to J&J?

22 A Well Mr. Pollock, first of all every tort is  
23 different. And so, I've never settled a tort with a  
24 matrix that looks like this before.

25 Q Okay.

1       A     And I've settled over 30. Okay. So, that's --  
2       that premise I can't agree with. What's concerning  
3       about this to me as resolution counsel, is that it was  
4       generated, if I had to guess from our document, or if  
5       not from negotiations between Mr. Conlan and Mr.  
6       Birchfield using a Birchfield document. I guess we'll  
7       find out when they testify. But the fact that our  
8       counsel who had all the information about the way we  
9       view this is then proposing this back to us, now  
10      sitting on the other side with our adversary, it  
11      certainly concerned me and I can understand why it  
12      concerned J&J.

13           Q     Sitting on the other side with our adversary.  
14      This is Jim Conlan's document. It is Legacy's  
15      document. Where does it say anywhere that Andy  
16      Birchfield crafted this document? Show me. I want you  
17      to show me. This is important to me, sir.

18      A     I hear you --

19           Q     I want to know exactly where it says that  
20      Andy Birchfield had some role in this?

21      A     I heard your testimony that it's Mr. Conlan's  
22      document. I haven't heard that under oath, if Mr.  
23      Conlan created this, then he created it from J&J's  
24      documents.

25           Q     Crystal clear to be fair to you, Mr. Murdica,

1 this letter from Legacy Solutions of November 9, 2023  
2 signed by Mr. Conlan, I guess it's a stamped signature  
3 on Plenary 66 is Mr. Conlan's letter. No doubt about  
4 it. There's a chart attached. I have no idea who  
5 created it. The question is do you?

6 A Well, I don't. But I'm surprised you don't. And  
7 I'm telling you this contains J&J's confidential  
8 thinking, there's no question in my mind. And the fact  
9 that you don't know who created it as the counsel tells  
10 me that you know where this really came from and it  
11 came from us.

12 Q I've been accused of worse things.

13 A Through the confidential relationship with Mr.  
14 Conlan.

15 Q Let me ask you this. With regard to the  
16 confidential information, tell me everything in here  
17 that is super, secret, confidential J&J information.  
18 Here it is, Plenary 67, what exactly in it is so  
19 secret?

20 A If you want me to go through the whole thing now  
21 --

22 Q I want you to go through this document on  
23 Plenary 67, what you just said this contains, J&J's  
24 confidential information. I didn't think this was a  
25 J&J document, but if it is I would like to know what in

1 it was J&J's confidential information?

2 A Mr. Pollock this exhibit, I guess at this point  
3 only you probably know where it came from. But I can  
4 tell you that J&J had a version that is very similar to  
5 this that was shared with Mr. Conlan, and it was  
6 debated with Mr. Conlan, it was part of our privileged,  
7 highly confidential strategic discussions about talc  
8 resolution. The fact that for six months plaintiffs  
9 were negotiating or talking to Mr. Conlan, nobody  
10 disclosed it to us, it was allegedly part of a talc  
11 mediation that I was in charge of, that nobody ever  
12 told me or the mediators about, and then it gets  
13 proposed to us well, everybody knows because Mr. Haas  
14 announced it at an investor meeting that we were  
15 working on another plan, and this is contrary to it by  
16 the objectors is extremely concerning and it doesn't  
17 take a rocket scientist to see the problem with that.

18 Q So which number on here, there's \$1 million,  
19 \$822,000, there's death stage four, death stage three,  
20 which column, which words are J&Js, which did they  
21 create?

22 A I could tell you that if I went back and looked at  
23 our matrix. But I believe the first column of the age  
24 divisions, the under 45 all the way down to 80 plus and  
25 the different the top column, breaking the cancers down

1 into different stages and I'm guessing the inter-  
2 relational values between the numbers in proportion,  
3 even though the numbers aren't the same, the number  
4 proportions may be the same as our internal thinking on  
5 this.

6 Q Was the \$1 million in the top left-hand  
7 corner, was that a J&J number?

8 A What I'm telling you is no it wasn't, but  
9 proportionally to the other numbers in the other  
10 columns and the way they relate to each other  
11 percentage-wise it looks the same as what I created  
12 back in 2020 when I was working with Mr. Conlan and  
13 when we were internally trying to figure out the way we  
14 viewed this. And if I went back to the chart, if I  
15 went to my email now and I looked it up and I did some  
16 math calculations, this may include our proportions  
17 from our own sampling of plaintiff's claims and our own  
18 view of it.

19 Q It may include a lot of things.

20 A That is extremely concerning.

21 Q Mr. Murdica, it may include a lot of things.  
22 I want to know for a fact what does it include. Under  
23 oath today, what information here, you've mentioned the  
24 first column that it has J&J's time -- age groups.  
25 Correct? Those are J&J's age groups?

1 A I can't answer the question any better, Mr.  
2 Pollock. I am more concerned about this now than I was  
3 when I came up here.

4 Q Wonderful. I'm trying to -- Mr. Murdica, I  
5 really want to know one thing. You've said it has  
6 J&J's confidential information. I want to know for the  
7 last time what precisely was confidential J&J  
8 information?

9 MR. BRODY: Your Honor, this has been asked  
10 and answered, I think three times already now.

11 MR. POLLOCK: I haven't gotten an answer yet,  
12 Judge.

13 MR. BRODY: Mr. Murdica has stated that he's  
14 answered the question as best as he can.

15 THE COURT: I heard an answer.

16 MR. POLLOCK: Fair enough, I'll move on.  
17 Actually, Your Honor, I have no further questions,  
18 thank you.

19 THE COURT: You're welcome.

20 UNIDENTIFIED MALE: You're closing --

21 THE COURT: Excuse me, you're a spectator. I  
22 don't want anymore interruptions. You can have a seat.

23 UNIDENTIFIED MALE: Can I pass him a note,  
24 Judge?

25 THE COURT: You can pass notes. You have

1 passed several notes. Thank you. Mr. Brody?

2 MR. BRODY: Thank you, Your Honor.

3 REDIRECT EXAMINATION BY MR. BRODY:

4 Q So, Mr. Murdica, I just want to ask you very  
5 few questions here on redirect. You were asked a  
6 number of questions about what's in your binder at tab  
7 four, if you could turn to that?

8 A Yes.

9 Q You there?

10 A Yes.

11 Q And you were directed to the communications  
12 that pre-dated October 18th, 2023. Do you recall those  
13 questions?

14 A I do.

15 Q And you were asked well, at that time, at the  
16 time that these communications pre-dating October 18th,  
17 2023 were going back and forth, well no one at J&J  
18 called the Ethics Committee, was the question that you  
19 were asked. Right?

20 A Right.

21 Q At that point in time, prior to October 18th,  
22 2023 when these communications were being made, did you  
23 know that Mr. Birchfield was involved in Mr. Conlan's  
24 proposal?

25 A I had no idea.

1 Q Do you know -- did anybody at J&J ever tell  
2 you that they knew at that point in time that Mr.  
3 Birchfield was involved?

4 A No, and I heard Mr. Haas's testimony that he had  
5 no idea either.

6 Q All right. So, at that point in time would  
7 there have been any reason for J&J to be concerned  
8 about Mr. Conlan sharing confidences with Mr.  
9 Birchfield?

10 A There would be no reason to think that that was  
11 happening.

12 Q If you turn to the first page of that  
13 document.

14 A Yes.

15 Q You know, you were asked a series of  
16 questions relatedly about the settlement matrix which  
17 is appended to what we have as hearing exhibit seven.  
18 Right?

19 A Right.

20 Q If you look at the first page of the email  
21 that's exhibit four, it says Andy Birchfield, Doug  
22 Dachille and I are prepared to meet with you and your  
23 team in person to share and discuss the terms of such  
24 matrix as part of the Legacy acquisition.

25 Q Does that suggest to you that this settlement

1 matrix is something that had been discussed with Mr.  
2 Birchfield?

3 A It does.

4 Q As to the settlement matrix itself, excuse  
5 me, the water is not helping here, turning to the  
6 settlement matrix itself, when you were working with  
7 Mr. Conlan when he was outside counsel for Johnson &  
8 Johnson, was he involved in privileged and confidential  
9 discussions of the type of the types of talc claims  
10 that might be considered as viable for settlement  
11 purposes?

12 A Mr. Conlan was involved in all of the settlement  
13 discussions including an evaluation of Mr. Birchfield's  
14 proposal which included all of these things.

15 Q And was he involved in privileged and  
16 confidential discussion of what the company viewed as  
17 the correct, appropriate categories of claims for  
18 purposes of settlement?

19 A Like I said, he was involved in evaluation of  
20 every aspect of the plan.

21 Q And I don't want to limit it to a negotiated  
22 settlement, but just the categories of claims then  
23 should be part of a resolution, speaking more broadly,  
24 whatever that resolution was of the talc claims?

25 A Necessarily he had to be, because it was part of

1 dealing with the future claims representative and  
2 evaluating the plan.

3 Q Was he involved in privileged and  
4 confidential discussions of how the company thought  
5 values in a settlement matrix like this should  
6 translate into an overall resolution number?

7 A Yes.

8 Q And was he involved in privileged and  
9 confidential discussions of what the company believed  
10 the values of the different types of claims that appear  
11 on a matrix like this should be for purposes of  
12 settlement?

13 A The settlement matrix originally proposed by Mr.  
14 Birchfield was part of the plan that Mr. Conlan and I  
15 were negotiating. So, all of it was included in that.

16 Q And was he specifically involved in  
17 privileged and confidential discussions of how -- of  
18 what J&J believed different values should be for  
19 purposes of a resolution of the talc claims?

20 A He was involved specifically in the amount of  
21 claimants we expected in the present and the future,  
22 and hence the way that translated into the values in  
23 that grid.

24 Q All right. Was that -- was that information  
25 that you considered to be privileged and confidential?

1 A Of course.

2 Q Would you ever share the information that was  
3 discussed internally when talking about how the company  
4 thought values should translate into the aggregate  
5 amount, values on a settlement matrix should translate  
6 into the aggregate amount of a resolution, the  
7 categories of claims that should be part of a  
8 resolution, what types of claims should be deemed as  
9 viable claims for purposes of a resolution, and the  
10 values of individual types of claims for purposes of a  
11 resolution, all of that privileged and confidential  
12 analysis is that you would ever share with opposing  
13 counsel?

14 A No, all I would share with opposing counsel on  
15 those fronts is something final that we were willing to  
16 agree to that would be our proposal, not our internal  
17 deliberations and what we thought about things, of  
18 course.

19 Q Thank you, Mr. Murdica.

20 MR. BRODY: That's all I have.

21 THE COURT: Mr. Pollock?

22 MR. POLLOCK: Short redirect, Your Honor.

23 RECROSS EXAMINATION BY MR. POLLOCK:

24 Q You mentioned that you were resolution for  
25 J&J. Right?

1 A Yes, sir.

2 Q And in that capacity you had discussions that  
3 were confidential on settlement communications with  
4 Andy Birchfield. Right?

5 A I did.

6 Q And you would not disclose those confidential  
7 communications because you are going to honor the  
8 confidentiality provision. Correct?

9 A I was forced to disclose some of them in the  
10 bankruptcy because Mr. Birchfield and his colleagues  
11 own motions to force me to and to depose me. But no,  
12 up until then, I always kept every settlement confident  
13 -- conversation confidential.

14 Q Excellent. So, and I didn't even know about  
15 the other ones, so I'll let it go for now. I'm going  
16 to stick with the general rule that you would abide by  
17 the -- your word that you would keep settlement  
18 communications confidential. Right?

19 A Yes, sir.

20 Q Excellent. If that's true, why is it not  
21 possible for Mr. Conlan who is in the business capacity  
22 of trying to buy out liabilities to keep, partition  
23 himself and keep those things confidential when he  
24 works for Legacy Liability Solutions?

25 A Because when you learn client confidences and then

1       you go do something in the same tort, on the same  
2       matter, you can't partition in your mind everything  
3       that you learned.

4             Q       But you did that with Andy.

5       A       I didn't do that with Andy.

6             Q       You learned things that were confidential  
7       regarding settlement communications with him, and yet  
8       you said I'm going to keep this confidential, I'm not  
9       going to disclose it to anyone else. You could do  
10      that. Right?

11      A       I'm working on the same side -- I'm still in the  
12      same role that I was always in, working on the same  
13      side in the same tort. And unfortunately, as I pointed  
14      out, Mr. Pollock, Mr. Birchfield forced me to disclose  
15      confidential communications in this tort by noticing my  
16      deposition and having me deposed by eight different  
17      lawyers twice.

18            Q       With regard to the exhibit seven, if we would  
19      go back to that for one moment, Plenary Hearing 67,  
20      we're almost done with this one, I promise you. Let me  
21      know when you're ready, sir. It's exhibit seven,  
22      Plenary 67.

23      A       Okay.

24            Q       Let me know when you're ready.

25      A       I have it.

1 Q Excellent. So, it's your testimony that this  
2 is not a document Mr. Conlan prepared. Correct?

3 MR. BRODY: Objection, Your Honor, that's  
4 outside the scope of my redirect.

5 THE COURT: Mr. Pollock?

6 MR. POLLOCK: Your Honor, the questioning has  
7 been pretty broad all day. I've got three more  
8 questions and I'm done.

9 THE COURT: Okay. I will permit you to ask  
10 that question. It's not a different topic. It's  
11 certainly not a topic that was addressed by Mr.  
12 Pollock, though.

13 MR. POLLOCK: Understood that completely.

14 THE COURT: Go ahead, Mr. Murdica.

15 MR. POLLOCK: You whacked me with the rule  
16 book.

17 BY MR. POLLOCK:

18 Q But let me ask you this, is it fair to say --  
19 are you saying that this is not a document Mr. Conlan  
20 prepared?

21 A I am not -- I am not saying that. You originally  
22 seem to suggest that it was a document that Mr. Conlan  
23 prepared. Then you said you don't know who prepared  
24 it. And I'm suggesting that you should ask your client  
25 who prepared it. But to me it looks like a J&J

1 settlement matrix that I created in 2020 internally.

2 Q Okay. So it's J&J document, not a Mr. Conlan  
3 document?

4 A I can't tell you that for sure. The only way I  
5 could do it is to take this and compare it to what's in  
6 my email from the fall of 2020 and tell you. But, like  
7 I said, I'm more concerned about this now than I was  
8 before you started asking me about it, because now I  
9 have some real questions about whether or not this was  
10 our document.

11 Q Fair enough. Last question and I'll leave  
12 you be at this time. Are you -- I'm sorry. With  
13 regard -- there was a grid -- are you familiar with the  
14 LTL-2 filing?

15 A The LTL-2 initial filing with the support of the  
16 60,000 claimants counsel.

17 Q Yes, sir. And there was a grid attached to  
18 that filing and it looked a lot like Plenary Exhibit  
19 67. Didn't it?

20 A I couldn't tell you. Do you have it?

21 Q So, I don't have it in front of me. But you  
22 viewed it or no?

23 A I don't think -- I am not sure what you're  
24 referring to, and I can't remember. It was a year ago.

25 Q Let me put it differently, if Plenary exhibit

1 67 looks a lot like the grid that was attached in the  
2 LTL-2 filing, which is what I represent to you it does,  
3 any reason to believe this is a super-secret J&J filing  
4 because they just published it on the bankruptcy court  
5 docket?

6 A Sir, unless you show it to me I have no idea what  
7 you're talking about. I don't recall a grid and I  
8 can't compare it. It's kind of like I would like to be  
9 able to compare that exhibit now to -- to the grid we  
10 created internally to one Mr. Birchfield sent me as a  
11 proposal. There's a lot of things I would like to do  
12 with that now and I have no idea what you're talking  
13 about.

14 Q Fair enough, sir. Last question and I'll  
15 leave you be. Were you aware that it was the mediators  
16 in the LTL-2 -- LTL matter that requested that Mr.  
17 Conlan participate?

18 A Mr. Conlan never participated in the mediation to  
19 my knowledge. The first time I learned that Mr. Conlan  
20 was allegedly involved in the mediation was two weeks  
21 ago when we found out that they've been having  
22 communications since April of 2023. That was the first  
23 time. The mediators never told me that he was  
24 involved. I've since contacted the mediators. And my  
25 understanding is that they didn't know that this was

1 going on. But maybe I'm wrong on that. I certainly  
2 never knew. J&J never knew. And we never saw Mr.  
3 Conlan at any mediation.

4 Q So you cannot answer the question whether the  
5 mediators asked that Mr. Conlan participate in trying  
6 to reach resolution. Is that correct?

7 MR. BRODY: Objection.

8 A I suggest you ask them, I don't know.

9 MR. BRODY: Mr. Murdica just answered that  
10 question.

11 THE COURT: Mr. Pollock, one more time.

12 Q Last question. Am I correct, you cannot  
13 answer the question, sir, whether the mediators in LTL  
14 asked that Mr. Conlan participate in the mediation  
15 process?

16 A That would be news to me. I suggest you ask the  
17 mediators.

18 Q Fair enough sir.

19 MR. POLLOCK: Your Honors, I thank you very  
20 much. Mr. Murdica, I'll get it right by the end, I  
21 thank you for your patience and time.

22 THE WITNESS: You did. Thank you.

23 THE COURT: Thank you, Mr. Murdica. You may  
24 step down. I'm going to ask counsel meet and confer  
25 and give us a few dates and share those dates with us.

1 And we'll -- Judge Singh and I will collaborate  
2 together and we'll merge our calendars with what's  
3 available for counsel. Everyone is excused. Mr.  
4 Golomb, Ms. Sharko, I think we have just administrative  
5 matter am I right, on our underlying non-motion  
6 related.

7 MR. POLLOCK: Are you okay if I clear up  
8 Judge while you do that?

9 THE COURT: Go right ahead. Is Mr.  
10 Placitella also involved, Mr. Golomb?

11 MR. GOLOMB: I don't know.

12 MR. POLLOCK: I think he's the primary  
13 culprit.

14 THE COURT: Same docket number, L-2648-15 MCL  
15 case 300. May I have your appearance, Mr. Golomb?

16 MR. GOLOMB: Yeah, Richard Golomb for the  
17 plaintiffs.

18 MR. PLACITELLA: Christopher Placitella.

19 THE COURT: Ms. Sharko?

20 MS. SHARKO: Susan Sharko.

21 THE COURT: Yes.

22 MR. GOLOMB: It's just an administrative  
23 matter, the third amended CMO-8 which is the scheduling  
24 order for the 15 cases in the pool had a deadline of  
25 March 22nd for the amended complaints that we filed.

1 Some of amended complaints were filed and there was a  
2 deficiency notice on the docket saying that a motion  
3 needs to be filed.

4 THE COURT: I don't need a motion.

5 MS. SHARKO: So, the third amended CMO-9 and  
6 when Mr. Golomb brought this to my attention and asked  
7 me if I was the person who (indiscernible) ECF I  
8 assured him that my colleague --

9 THE COURT: It was probably automatic.

10 COURT CLERK: I have well-trained  
11 (indiscernible).

12 MR. GOLOMB: I figured that. That's why I  
13 just wanted to bring to the Court's attention.

14 MS. SHARKO: So, what I told Mr. Golomb is  
15 that those complaints that were timely filed, I  
16 stipulate that they're timely filed. And I suggested  
17 that an easy fix might be for him to prepare a consent  
18 order which says that under third amended CMO-9 the  
19 following 15 cases are authorized to file amended  
20 complaints.

21 THE COURT: I'm going to sign that order  
22 stating that on the record. Send that consent order  
23 and we'll address that right away.

24 MR. GOLOMB: Thank you, Your Honor.

25 THE COURT: You're welcome. Thanks. Thanks

1 everyone. Have a very nice evening.

2 MR. PLACITELLA: Thank you.

3 MS. SHARKO: Thank you.

4 (Hearing day concluded at 4:37 p.m.)

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/s/ Sharon Conover

Sharon Conover

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